

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:

4D MANAGEMENT HOLDINGS, INC.,

Mortgage Broker License No. UNL,

and

4D COMPANIES, LLC,

Mortgage Broker License No. UNL,

and

JOSEPH WAGNER,

Mortgage Broker License No. UNL,

Respondents.

Order No. 2018-011

Case No. 2018-011

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

Issued and Entered,
This 10th day of January, 2019,
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.* ("the Statute"), and Chapter 645B of the Nevada Administrative Code, NAC 645B.001 *et seq.* ("the

1 Regulation”) (collectively, “the Act”), governing the licensing and conduct of mortgage brokers and
2 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 Statute;
5 and,

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

8 The Division of Mortgage Lending (“the Division”) having received information indicating that
9 4D MANAGEMENT HOLDINGS, INC. (“4DMH”), 4D COMPANIES LLC (“4D COMPANIES”),
10 and JOSEPH WAGNER (“WAGNER”) (collectively, the “RESPONDENTS”) are or were engaged in
11 activity requiring licensure as a mortgage broker under the Statute; and,

12 The Division having received a complaint against 4DMH and WAGNER on or about August 10,
13 2017, and commenced an investigation pursuant to NRS 645B.060(2)(c), and determined, from that
14 investigation, that RESPONDENTS were engaged in activity requiring licensure as a mortgage broker
15 under the Statute; and,

16 The Division staff having reported the results of its investigation to the Commissioner; and,

17 The Commissioner having reviewed the results of the investigation, makes the following
18 FINDINGS OF FACT and CONCLUSIONS OF LAW:

19 **Findings of Fact**

20 1. Unless a person is exempt from the provisions of the Statute, and has complied with the
21 requirements for that exemption, NRS 645B.900 prohibits any person from offering or providing any of
22 the services of a mortgage broker or mortgage agent, or otherwise engaging in, carrying on or holding
23 himself or herself out as engaging in or carrying on the business of a mortgage broker or mortgage
24 agent, without first obtaining a Nevada mortgage broker license or mortgage agent license pursuant to
25 the Statute.

26 2. NRS 645B.0127(1) defines “[m]ortgage broker” to include any person who directly or
27 indirectly does any of the following:

28 (a) Holds himself or herself out for hire to serve as an agent for any

1 person in an attempt to obtain a loan which will be secured by a lien on real
2 property;

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

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

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

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

13 [Emphasis added.]

14 3. The Division's investigation specifically found the following:

15 a. 4DMH is an active domestic corporation that holds a Nevada business license (Entity
16 No. C19275-2003). Upon information and belief, 4DMH has been conducting business in Nevada since
17 on or about August 8, 2003. 4DMH is not currently and has at no time relevant to this matter been
18 licensed as a mortgage broker in Nevada under the Statute.

19 b. Based upon information and belief, 4DMH conducts its business from 6290 McLeod
20 Drive, Suite #110, Las Vegas, Nevada, 89120, and/or 6360 McLeod Drive, Suite #15, Las Vegas,
21 Nevada, 89120.

22 c. As reflected in the state-business licensing records of the Nevada Secretary of State
23 ("NSOS"), WAGNER serves as the sole officer of 4DMH, for which he also acts as its registered agent
24 at the office located on 6290 McLeod Drive, Suite #110, Las Vegas, Nevada. WAGNER is not
25 currently and has at no time relevant to this matter been licensed as a mortgage broker or mortgage
26 agent in Nevada under the Statute.

27 d. 4D COMPANIES is an active domestic limited-liability company that holds a Nevada
28 business license (Entity No. E0472122010-0). The NSOS identifies both the managing officer and

1 resident agent of that company as 4D ENERGY LLC, located at 6290 McLeod Drive, Suite #110, Las
2 Vegas, Nevada, 89120, the same address from which WAGNER serves as the sole officer and resident
3 agent of 4DMH. 4D COMPANIES LLC is not currently and at no time relevant to this matter been
4 licensed as a mortgage broker in Nevada under the Statute.

5 e. 4D ENERGY LLC ("4D ENERGY") is an active domestic limited-liability company
6 that holds a Nevada business license (Entity No. E0457762010-7). The NSOS identifies both the
7 managing officer and resident agent of that company as 4D COMPANIES, located at 6290 McLeod
8 Drive, Suite #110, Las Vegas, Nevada, 89120, the same address for which 4D ENERGY is represented
9 to serve as the managing officer and resident agent for 4D COMPANIES, and the same address from
10 which WAGNER serves as the sole officer and resident agent of 4DMH. 4D ENERGY is not currently
11 and at no time relevant to this matter been licensed as a mortgage broker in Nevada under the Statute.

12 f. On December 9, 2015, following conclusion of a previous investigation conducted by
13 the Division concerning 4DMH'S and WAGNER'S alleged private-money lending and "seller carry-
14 back financing" lending activities concerning the purchase of properties owned by 4DMH and/or
15 WAGNER as secured by Nevada real property, the Division's then-existing Chief Compliance/Audit
16 Investigator, issued a Letter of Caution ("LOC") to 4DMH and WAGNER, which constituted neither
17 formal discipline against 4DMH or against WAGNER individually. The LOC explained that while the
18 Division found that their unlicensed private-money lending activities violated NRS 645B.900 as well as
19 the corresponding prohibition concerning mortgage banking activities (NRS 645E.900), based upon the
20 Division's understanding that 4DMH and WAGNER had chosen to use a *specified, Nevada-licensed*
21 *broker* to facilitate their lending activities in the future, the Division had determined to close the matter.
22 At the same time, however, instructing 4DMH and WAGNER to become familiar with the provisions of
23 the applicable law prior to engaging in the making or arranging of mortgage loans secured by Nevada
24 real property, the LOC stressed that if the Division learned that they *continued* to offer or provide
25 financing for Nevada residential real property in the absence of proper licensure or exemption from
26 such requirement, the Division may reopen the matter and pursue formal administrative disciplinary
27 proceedings.

1 g. Following issuance of the Division's LOC, as admitted by WAGNER during the
2 course of the Division's investigation subject of the instant matter, 4DMH and WAGNER continued to
3 engage in mortgage lending activities as furthered by a business model reflecting WAGNER'S purchase
4 of distressed residential properties under the name of 4DMH, rehabilitation of the homes for sale, and
5 performance of the services of a private-money lender in funding the acquisition of such properties by
6 the respective borrowers in seller-carryback transactions. In particular, as documented by the Division,
7 even where the mortgage transactions related to these properties may have been in various stages of the
8 loan process prior to issuance of the LOC, the purchase of at least *nine* secured residential properties in
9 Nevada, were funded by 4DMH and WAGNER *after* their receipt of the LOC. From approximately
10 December 9, 2015 through at least May 4, 2017, 4DMH and WAGNER brokered and funded the sale of
11 homes situated at the following locations: E. Carey Avenue, Las Vegas; Quintearo Street, Las Vegas;
12 Daley Street, North Las Vegas; Mabel Road, Las Vegas; Cervantes Street, Las Vegas; Cunningham
13 Drive, Las Vegas; Plumflower Lane, Las Vegas; Kolanut Lane, Las Vegas; and Jackson Avenue, Las
14 Vegas. The Division learned that 4DMH and WAGNER subsequently assigned or sold the promissory
15 notes which secured the trust deeds for the properties situated on Daley Street and Kolanut Lane to
16 other individuals or entities.

17 h. Upon information and belief, the long-term (30-year), high-interest (12-percent) rate
18 for the \$60,000.00 loan financed in the 2016 seller-carryback transaction related to the Daley street
19 property (the deed of trust securing that loan specifically identifying 4DMH as a beneficiary, whose
20 address is 6360 McLeod Drive, #15, Las Vegas, Nevada 89120) is typical of the terms of the
21 residential-mortgage loans brokered by and extended to various borrowers by 4DMH and WAGNER.

22 i. On or about March 22, 2018, WAGNER informed Division Compliance/Audit
23 Investigator DM, that while he had "approached" the owner of the Nevada-licensed brokerage which
24 during the course of the Division's prior investigation of 4DMH and WAGNER, he had specifically
25 identified as the broker he selected to utilize when conducting all future mortgage-lending activities,
26 explained that because that broker's fees were too high, he had determined to "shut down" the business.
27 He represented that he had completed only a "handful" of loans that were still in the funding process
28 following issuance of the LOC.

1 4. The Division additionally discovered that through the websites www.4dcompanies.com
2 and www.4dcasas.com, RESPONDENTS advertise and promote their private-money lending services,
3 specifically targeting members of the Las Vegas Hispanic community in efforts to facilitate the funding
4 for purchase of residential real estate in Nevada. As translated from the Spanish language as touted in
5 www.4dcasas.com, and providing a telephone number for use to obtain more information,
6 RESPONDENTS urge consumers to stop wasting their money on rent and to “buy your house” with
7 only a 10% down payment or “engagement” with no credit required. As again translated from Spanish,
8 the website proclaims “You choose us, We buy, You are the owner! Look Now.” Similarly, on
9 www.4dcompanies.com, RESPONDENTS encourage persons to not waste their money on rent when
10 they could rent with the option to buy, “not when you could own your own home.”

11 5. By holding themselves out as being able to make loans secured by liens on real property,
12 and by providing the source of such funding as described above with respect to at least nine residential
13 properties in Nevada (as well as thereafter additionally selling or assigning the notes which secured the
14 liens on at least two of such properties), 4DMH and WAGNER have engaged in or carried on the
15 business of a mortgage broker in Nevada within the meaning of NRS 645B.0127. From at least
16 approximately December 9, 2015 through at least May 4, 2017, despite having represented to the
17 Division in late 2015 that they would utilize a specified Nevada-licensed broker to conduct all of their
18 future mortgage lending activities (that understanding explicitly set forth in the Division’s issued LOC),
19 as late as approximately March 22, 2018, over three years later, WAGNER admitted that he had *not*
20 utilized that broker (or any other broker for that matter) to arrange or fund the continued mortgage-
21 lending transactions engaged in by 4DMH and WAGNER.

22 6. Further, as facilitated by RESPONDENTS’ utilization of the two aforementioned
23 websites to solicit the business of prospective Nevada borrowers in their attempts to obtain a loan for
24 the purchase of residential property, RESPONDENTS, within the meaning of “mortgage broker” as
25 defined by NRS 645B.0127, *continue* to directly or indirectly hold themselves out as private-money
26 lenders able to originate, underwrite, and fund all of such mortgage loans and transactions and able to
27 assist Nevada consumers in achieving “purchase of their own homes.”
28

1 7. RESPONDENTS engaged or continue to engage in activities and conduct which require
2 licensure as a mortgage broker under the Statute and are not exempt from licensure under the Statute.

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

4 **Conclusions of Law**

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

9 10. By providing or offering to provide the services of a mortgage broker without having
10 first obtained the applicable license under the Statute, and not being exempt from the licensure
11 requirements, RESPONDENTS are in violation of NRS 645B.900.

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

14 12. NRS 645B.690(1)(a) requires the Commissioner to impose an administrative fine of not
15 more than \$50,000.00 on a person who offers or provides any of the services of a mortgage broker or
16 otherwise engages in, carries on, or holds himself or herself out as engaging in or carrying on the
17 business of a mortgage broker and, at the time the person was required to have a license pursuant to the
18 Statute and the person did not have such a license.

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

20 **Order**

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

26 NOW, THEREFORE, IT IS ORDERED that 4D MANAGEMENT HOLDINGS, INC., 4D
27 COMPANIES LLC, and JOSEPH WAGNER shall immediately CEASE AND DESIST from
28

1 advertising, engaging in, or otherwise carrying on or holding themselves out as engaging in or carrying
2 on any activities that require licensure as a mortgage broker under the Statute.

3 IT IS FURTHER ORDERED that an ADMINISTRATIVE FINE in the amount of \$45,000.00
4 shall be and hereby is imposed, jointly and severally, upon 4D MANAGEMENT HOLDINGS, INC.,
5 4D COMPANIES LLC, and JOSEPH WAGNER in accordance with NRS 645B.690(1)(a). The
6 ADMINISTRATIVE FINE shall be due and payable on the 30th day following the effective date of this
7 Order and shall be tendered to the Division in accordance with the attached wire transfer instructions.

8 IT IS FURTHER ORDERED that RESPONDENTS shall be and hereby are assessed, jointly and
9 severally, on 4D MANAGEMENT HOLDINGS, INC., 4D COMPANIES LLC, and JOSEPH
10 WAGNER, the Division's INVESTIGATIVE COSTS in the amount of \$3,855.00, in accordance with
11 NRS 622.400. The INVESTIGATIVE COSTS shall be due and payable on the 30th day following the
12 effective date of this Order and shall be tendered to the Division with the ADMINISTRATIVE FINE in
13 accordance with the attached wire transfer instructions.

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

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

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

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

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 The following provisions of the Nevada Revised Statutes and Nevada Administrative Code are
12 relevant to the right to hearing in this matter:

13
14 **NAC 645B.515 Orders to cease and desist from certain activities.**

15 1. If a person engages in an activity in violation of the provisions of this
16 chapter or [chapter 645B](#) of NRS, the Commissioner may issue an order to the
17 person directing the person to cease and desist from engaging in the activity.

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

20 (a) For which the person has not received a license or certificate of exemption
21 as required by [chapter 645B](#) of NRS; or

22 (b) In a manner that violates the provisions of this chapter or [chapter 645B](#) of
23 NRS.

24 3. A person who receives an order to cease and desist pursuant to this section
25 shall not engage in any activity governed by [chapter 645B](#) of NRS after receiving
26 the order unless the order is suspended or rescinded.

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

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

5 (a) Hold a hearing:

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

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

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

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

12 **NRS 645B.750 Duty of Commissioner to provide written notice of**
13 **disciplinary action or denial of license; right to administrative hearing; entry**
14 **of final order; appeals.**

15 1. If the Commissioner enters an order taking any disciplinary action against
16 a person or denying a person's application for a license, the Commissioner shall
17 cause a written notice of the order to be served personally or sent by certified mail
18 or telegram to the person.

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

23 3. A person may appeal a final order of the Commissioner in accordance with
24 the provisions of [chapter 233B](#) of NRS that apply to a contested case.

25 **NRS 233B.121 Notice of hearing in contested case; contents of notice;**
26 **representation by counsel; opportunity to respond and present evidence and**
27 **argument; fees and mileage for witnesses; informal disposition; voluntary**
28 **surrender of license in contested case deemed disciplinary action; contents of**
record; transcriptions; findings of fact.

1. In a contested case, all parties must be afforded an opportunity for hearing
after reasonable notice.

1 2. The notice must include:

2 (a) A statement of the time, place and nature of the hearing.

3 (b) A statement of the legal authority and jurisdiction under which the hearing
4 is to be held.

5 (c) A reference to the particular sections of the statutes and regulations
6 involved.

7 (d) A short and plain statement of the matters asserted. If the agency or other
8 party is unable to state the matters in detail at the time the notice is served, the
9 initial notice may be limited to a statement of the issues involved. Thereafter,
10 upon application, a more definite and detailed statement must be furnished.

11 3. Any party is entitled to be represented by counsel.

12 4. Opportunity must be afforded all parties to respond and present evidence
13 and argument on all issues involved. An agency may by regulation authorize the
14 payment of fees and reimbursement for mileage to witnesses in the same amounts
15 and under the same conditions as for witnesses in the courts of this state.

16 5. Unless precluded by law, informal disposition may be made of any contested
17 case by stipulation, agreed settlement, consent order or default. If an informal
18 disposition is made, the parties may waive the requirement for findings of fact and
19 conclusions of law.

20 6. The voluntary surrender of a license in a contested case shall be deemed to
21 constitute disciplinary action against the licensee.

22 7. The record in a contested case must include:

23 (a) All pleadings, motions and intermediate rulings.

24 (b) Evidence received or considered.

25 (c) A statement of matters officially noticed.

26 (d) Questions and offers of proof and objections, and rulings thereon.

27 (e) Proposed findings and exceptions.

28 (f) Any decision, opinion or report by the hearing officer presiding at the
hearing.

 8. Oral proceedings, or any part thereof, must be transcribed on request of any
party. The party making the request shall pay all the costs for the transcription.

 9. Findings of fact must be based exclusively on a preponderance of the
evidence and on matters officially noticed.

NRS 233B.032 “Contested case” defined.

“Contested case” means a proceeding, including but not restricted to rate making and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing, or in which an administrative penalty may be imposed.

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

The verified petition requesting a hearing must be delivered to:

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

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