

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF MORTGAGE LENDING

IN THE MATTER OF:

CASE NO. 2020-004

ROBERT GINDT, 1802 NORTH CARSON STREET, LLC, a Nevada limited liability company, PHEASANT FERGUSON, LLC, a Nevada limited liability company, and CARE FREE HOSPITALITY, LLC, a Nevada limited liability company,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

Mortgage Company License No. Unlicensed

Respondents.

This matter was heard on August 18, 2021. The Nevada Division of Mortgage Lending (the "Division"), through its attorneys, Aaron Ford, Attorney General, by Matthew Feeley, Deputy Attorney General, appeared at the hearing, and Respondent Robert Gindt appeared, with his counsel Kaempfer Crowell, by Richard G. Campbell, Jr., Esq., on behalf of himself and Respondents 1802 North Carson Street, LLC, Pheasant Ferguson, LLC, and Care Free Hospitality, LLC (collectively referred to as "Gindt" or Respondents). On September 3, 2021, the parties filed their post hearing statements.

I. FINDINGS OF FACTS

1. While many facts were contested, the determinative facts largely were agreed by the parties.

2. Respondents are not licensed to engage in the business of a mortgage company, nor have Respondents sought an exemption from the Division under NRS 645B.016(3).

3. Gindt buys and sells commercial properties, primarily motels and hotels. Often, he finances a portion of his sales by having the purchasers sign a promissory note secured by a deed of trust on the property being purchased, a transaction commonly referred to as a carryback.

4. Gindt twice lent money to individuals, not part of a carryback transaction, which loans were also secured by a deed of trust on residential properties. Both loans were made in 2019.

5. One loan was to Nick Maerz, with whom Gindt had been in a transaction already and was a restructuring of that loan, secured by a deed a trust. The second was with Rebecca Montero,

1 who was a stranger to Gindt.

2 6. Gindt testified that he created a separate LLC for each transaction, often using the
3 property's address as the name. Both the residential loans, however, were made by Gindt through
4 1802 North Carson Street, LLC, according to affidavits filed by Gindt.

5 7. Ms. Montero approached William Golden, at the bank at which he worked, about
6 obtaining a personal loan. Mr. Golden could not make the loan but suggested that perhaps Gindt
7 could.¹ Mr. Golden then called Gindt to ascertain his willingness to make the loan, and Gindt
8 having answered affirmatively, Mr. Golden then gave Ms. Montero Gindt's number.

9 8. Ms. Montero called Gindt, inquiring about a \$25,000 loan, which Gindt agreed to
10 make if secured by a deed of trust on a residential rental property of hers. Gindt sent her to a title
11 company he uses, and thereafter all communications were through the title company.

12 9. Prior to closing, Ms. Montero asked to have the loan increased from \$25,000 to
13 \$30,000. The title agent inquired of Gindt, who agreed, and the loan was closed at \$30,000.

14 10. The Division entered an order against Respondents to cease and desist from
15 unlicensed activity and imposing a fine of \$30,000 and costs of \$1,545, on May 19, 2021. This
16 hearing followed Respondents' appeal.

17 II. CONCLUSIONS OF LAW

18 1. According to NRS 645B.900²:

19 It is unlawful for any person to offer or provide any of the services of a mortgage
20 broker or mortgage agent or otherwise to engage in, carry on or hold himself or
21 herself out as engaging in or carrying on the business of a mortgage broker or
22 mortgage agent without first obtaining the applicable license issued pursuant to
23 this chapter, unless the person:

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

26 2. A mortgage broker is defined by NRS 645B.0127(1):

27 "Mortgage broker" means a person who, directly or indirectly:

28 ¹ Mr. Golden testified that Ms. Montero brought up Gindt first, which testimony was not credible. Indeed, even Gindt assumes that Mr. Golden first mentioned him, in Respondents' Post Hearing Statement at 2.

² These statutes were amended effective January 1, 2020, after the transactions occurred, but the amendments only changed the nomenclature, which now references "mortgage companies," and the substance remains unchanged.

- 1 (a) Holds himself or herself out for hire to serve as an agent for any person in
2 an attempt to obtain a loan which will be secured by a lien on real property;
3 (b) Holds himself or herself out for hire to serve as an agent for any person who
4 has money to lend, if the loan is or will be secured by a lien on real property;
5 (c) Holds himself or herself out as being able to make loans secured by liens on
6 real property;
7 (d) Holds himself or herself out as being able to buy or sell notes secured by
8 liens on real property; or
9 (e) Offers for sale in this State any security which is exempt from registration
10 under state or federal law and purports to make investments in promissory notes
11 secured by liens on real property.

12 3. NRS 645B.690 authorizes the Commissioner to impose an administrative penalty of
13 not more than \$50,000 for each violation by any person who was required to have a license under
14 NRS 645B but did not.

15 4. NRS 645B.070(3) authorizes the Commissioner to impose investigative costs and
16 attorneys' fees attributable to an investigation of a person pursuant to NRS 645B.

17 5. Gindt provided the services of a mortgage broker, with Mr. Maerz and Ms. Montero,
18 by making loans secured by liens on real property, without a license, in violation of NRS
19 645B.900.

20 6. Gindt argued that he did not hold himself out as able to provide the services of a
21 mortgage broker, and therefore does not meet the definition of mortgage broker under NRS
22 645B.0127(1). However, NRS 645B.900 penalizes the offering or providing of the services of a
23 mortgage broker, in addition to holding oneself out as a mortgage broker; the services of a
24 mortgage broker are not conditioned upon having been advertised. Otherwise, the language in
25 NRS 645B.900 would be redundant. Moreover, as the Division correctly points out, Gindt did
26 hold himself out as being able to provide these services, in the telephone call in which he
27 admitted that Ms. Montero asked him for a loan, and he agreed so long as it was secured by a
28 deed of trust. This act requires a license.

29 III. ORDER

30 NOW, THEREFORE, IT IS HEREBY ORDERED that, the Final Order Imposing
31 Administrative Fine of \$30,000 and Requiring the Payment of Investigative Costs in the amount
32 of \$1,545 is AFFIRMED and the Order to Cease and Desist, issued May 19, 2021, remains in

1 force, as to Robert Gindt and 1802 North Carson Street, LLC. The claims against Pheasant
2 Ferguson, LLC and Care Free Hospitality, LLC are dismissed.

3 DATED this 22nd day of September 2021.

4 /s/ David R. Cassetty
5 DAVID R. CASSETTY
6 Hearing Officer
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