

TERMS COMPLETE

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
CONSUMER SERVICES DIVISION

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

NO. C-04-123-06-CO01

ROSEMARY D. MURPHY, dba MIRACLE
MORTGAGE & FINANCE,
Respondent.

CONSENT ORDER

COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Chuck Cross, Division Director, Division of Consumer Services, and Rosemary D. Murphy (Respondent Murphy) by and through her attorney Douglas D. Sulkosky, and finding that the issues raised in the captioned matter may be economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 19.146 of Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

AGREEMENT AND ORDER

The Department of Financial Institutions, Division of Consumer Services (Department) and Respondent Murphy have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-04-123-04-SC01 (Statement of Charges), entered September 22, 2005, (copy attached hereto). Pursuant to chapter 19.146 RCW, the Mortgage Broker Practices Act (Act) and RCW 34.05.060 of the Administrative Procedure Act, Respondent Murphy hereby agrees to the Department's entry of this Consent Order and further agrees that the issues raised in the above captioned matter may be economically and efficiently settled by entry of this Consent Order. The parties intend this Consent Order to fully resolve the Statement of Charges.

Based upon the foregoing:

A. **Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter of the activities discussed herein.

CONSENT ORDER

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

1 **B. Waiver of Hearing.** It is AGREED that Respondent Murphy has been informed of the right to a
2 hearing before an administrative law judge, and that she has waived her right to a hearing and any and all
3 administrative and judicial review of the issues raised in this matter, or of the resolution reached herein.
4 Accordingly, Respondent Murphy agrees to withdraw her appeal and to inform the Office of Administrative
5 Hearings in writing of her withdrawal.

6 **C. Admission of Facts.** Respondent Murphy admits to the following facts:

- 7 1. Respondent Murphy submitted a mortgage broker license application to the Department, dated
8 January 26, 2004, in which she swore and affirmed that she would operate Miracle Mortgage &
9 Finance as a sole proprietorship. On January 23, 2004, Respondent Murphy signed a contract to
10 operate Miracle Mortgage & Finance as a partnership with Robert Warnock (Warnock).
- 11 2. Respondent Murphy did not work as a loan officer for Arista Mortgage Company from April
12 1993 through February 1998 and did not work as a loan officer for Allstate Financial Services,
13 Inc. from February 1998 through October 2003.
- 14 3. Respondent Murphy became an independent contractor with America One Finance, Inc. (America
15 One) on or around December 17, 2003.
- 16 4. Between January 1, 2004 and May 31, 2004, while conducting the business of a mortgage broker
17 from 1720 S 72nd Suite 103, Tacoma, WA 98408 and 1019 Pacific Ave Suite 1111, Tacoma, WA
18 98402, Respondent Murphy assisted at least twelve (12) borrowers in applying to obtain
19 residential mortgage loans, and assisted five (5) of these borrowers in obtaining residential
20 mortgage loans. Respondent Murphy directly collected \$13,540.00 in fees from three (3) of these
21 borrowers while assisting them in obtaining residential mortgage loans or at the closing of their
22 residential mortgage loans or both.
- 23 5. At the closing of Borrower 3's residential mortgage loan, Respondent Murphy collected a
24 \$11,390.00 check payable to America One from the settlement agent, personally endorsed this

1 check, and deposited this check into an operating account under her control without America
2 One's permission.

- 3 6. Respondent Murphy collected \$1,250.00 for payment of third-party service providers at the
4 closing of two (2) residential mortgage loans. Respondent Murphy deposited these funds into
5 operating accounts under her control.
- 6 7. \$1,200.00 of the funds discussed in paragraph C6 above was for payment of third-party service
7 providers who had already received payment. Respondent Murphy did not refund these funds to
8 the borrowers.
- 9 8. Respondent Murphy did not provide three (3) borrowers with full written disclosures, containing
10 an itemization and explanation of all fees and costs that the borrowers were required to pay in
11 connection with obtaining a residential mortgage loan, and specifying the fee or fees which inured
12 to the benefit of Respondent Murphy or America One or both, within three days following receipt
13 of a loan application or any moneys from the borrowers.
- 14 9. Respondent Murphy charged at least two (2) borrowers fees inuring to the benefit of Respondent
15 Murphy or America One or both in excess of the fees disclosed on the initial written disclosures.
16 Respondent Murphy did not provide these borrowers a clear written explanation of the fees and
17 the reason for charging fees exceeding those which were previously disclosed.
- 18 10. Respondent Murphy made personal loans to Borrower 1, Borrower 3, Borrower 7, and Borrower
19 8, while she was attempting to originate residential mortgage loans on each of their residences.
20 Respondent Murphy secured these personal loans with Deeds of Trust totaling \$65,200.00 on the
21 borrowers' residences. Each of these Deeds of Trust was satisfied when these borrowers
22 obtained residential mortgage loans on their residences.
- 23 11. Respondent Murphy did not provide the Department with any documents or written explanation
24 regarding the Deeds of Trust involving Borrowers 1, 7 and 8 recorded in her favor April 12, 2004,
25

1 and the Deed of Trust involving Borrower 3, in response to Directive to Produce Records C-04-
2 123-04-SD13 (Directive) issued by the Department August 3, 2004.

3 **D. Violations of the Act.** It is AGREED that Respondent Murphy violated RCW 19.146.0201(1)
4 through (3), (6), (8) and (12), RCW 19.146.030, RCW 19.146.050, RCW 19.146.200, RCW 19.146.265, and that
5 Respondent Murphy did not comply with the Department's Directive.

6 **E. Denial of Application for Mortgage Broker License.** It is AGREED that Respondent Murphy's
7 outstanding application for a Mortgage Broker license is denied.

8 **F. Application for Mortgage Broker License.** It is AGREED that Respondent Murphy shall not apply
9 to the Department for any license issued pursuant to chapter 19.146 RCW under any name for a period of fifteen
10 (15) years from the date of entry of this Consent Order. It is further AGREED that, should Respondent Murphy
11 apply to the Department for any license issued pursuant to chapter 19.146 RCW at any time after fifteen (15) years
12 from the date of entry of this Consent Order, she shall be required to meet any and all application requirements in
13 effect at that time.

14 **G. Fine.** It is AGREED that Respondent Murphy shall pay a fine to the Department in the amount of
15 \$31,800.00 for violating RCW 19.146.0201 (1) through (3), (6), (8) and (12), RCW 19.146.030, RCW 19.146.050,
16 RCW 19.146.200, RCW 19.146.265, and for failing to comply with the Department's Directive. It is further
17 AGREED that Respondent Murphy has provided the Department with a \$65,697.00 lien, as discussed in
18 paragraph K, in part to secure performance of this paragraph of this Consent Order. It is further AGREED that if,
19 within ninety (90) days from the date of entry of this Consent Order, Respondent Murphy fully pays the restitution
20 amounts described in paragraph I and the investigation fee described in paragraph J, the Department shall consider
21 this paragraph of this Consent Order fully performed and the fine will not be collected from Respondent Murphy.
22 HOWEVER, it is further AGREED that if, within ninety (90) days from the date of entry of this Consent Order,
23 Respondent Murphy does not fully pay the restitution amounts described in paragraph I and the investigation fee
24 described in paragraph J, the Department may pursue any and all actions to collect the \$31,800.00 fine.

1 **H. Prohibition from Industry.** It is AGREED that Respondent Murphy is prohibited from participating
2 in the conduct of the affairs of any mortgage broker licensed by the Department or any mortgage broker exempt
3 from Washington law under RCW 19.146.020(1)(d) or (f) for fifteen (15) years from the date of entry of this
4 Consent Order in any capacity, including but not limited to: (1) any financial capacity whether active or passive or
5 (2) as an officer, director, principal, designated broker, employee, or loan originator or (3) any management,
6 control, oversight or maintenance of any trust account(s) in any way related to any residential mortgage
7 transaction or (4) receiving, disbursing, managing or controlling in any way, consumer trust funds in any way
8 related to any residential mortgage transaction.

9 **I. Restitution.** It is AGREED that Respondent Murphy shall pay restitution to consumers in the amount
10 of \$27,394.00 as follows:

- | | | |
|----|---------------|-------------|
| 11 | 1. Borrower 1 | \$13,600.00 |
| 12 | 2. Borrower 2 | \$ 1,600.00 |
| 13 | 3. Borrower 3 | \$11,740.00 |
| 14 | 4. Borrower 7 | \$ 454.00 |

15 It is further AGREED that Respondent Murphy shall provide the Department with written proof of such payments.
16 If restitution cannot be made to any particular consumer, Respondent Murphy shall take the necessary steps to
17 escheat such funds to the State of Washington and provide the Department with written proof of such action. The
18 "written proof" at a minimum must consist of copies of the front and back of cancelled checks. It is further
19 AGREED that Respondent Murphy has provided the Department with a \$65,697.00 lien, as discussed in
20 paragraph K, in part to secure performance of this paragraph of this Consent Order. It is further AGREED that if,
21 within ninety (90) days from the date of entry of this Consent Order, Respondent Murphy does not fully pay these
22 restitution amounts, the Department may pursue any and all actions to effectuate satisfaction of any unpaid portion
23 of these restitution amounts.

1 **J. Investigation Fee.** It is AGREED that Respondent Murphy shall pay to the Department an
2 investigation fee of \$6,503.00, calculated at \$37.16 per hour for one hundred eighty-five (185) staff hours devoted
3 to the investigation, less ten (10) staff hours paid out of Respondent Murphy's application deposit. It is further
4 AGREED that Respondent Murphy has provided the Department with a \$65,697.00 lien, as discussed in
5 paragraph K, in part to secure performance of this paragraph of this Consent Order. It is further AGREED that if,
6 within ninety (90) days from the date of entry of this Consent Order, Respondent Murphy does not fully pay this
7 fee, the Department may pursue any and all actions to collect any unpaid portion of this fee.

8 **K. Lien.** It is AGREED that Respondent Murphy certifies under penalty of perjury under the laws of the
9 State of Washington that, to the best of her knowledge as of the date of entry of this Consent Order:

- 10 1. Respondent Murphy and James P. Murphy (spouse) are legally seised of real property located at
11 1208 Chambers St., Steilacoom, WA 98388 (1208 Chambers), the legal description of which is
12 "Section 6, Township 19, Range 02, Quarter 13: Lot 4 of Short Plat 78-457 DESC under parcel
13 02-19-06-1-076 out of 1-006 SEG L1730 SF ES" and the tax parcel number of which is
14 0219065018.
- 15 2. Respondent Murphy and her spouse have listed 1208 Chambers for sale.
- 16 3. 1208 Chambers is encumbered by a Deed of Trust recorded May 18, 2005 in favor of U.S. Bank,
17 N.A. (US Bank) with a maximum obligation of \$40,000.00, and a Deed of Trust recorded May
18 30, 2006 in favor of Citifinancial, Inc. (Citifinancial) with a principal sum of \$15,427.38.
- 19 4. There are no encumbrances on 1208 Chambers other than the recorded US Bank and Citifinancial
20 encumbrances described above.
- 21 5. The fair market value of 1208 Chambers exceeds the total of the recorded US Bank and
22 Citifinancial encumbrances described above and estimated closing costs associated with a sale by
23 an amount greater than the total of the fine, restitution, and investigation fee obligations discussed
24 in paragraphs G, I, and J, respectively, of this Consent Order.

- 1 6. Respondent Murphy and her spouse have not transferred any of their ownership rights in 1208
2 Chambers as of the date of entry of this Consent Order.
- 3 7. Respondent Murphy and her spouse will not transfer any of their ownership rights in 1208
4 Chambers, other than by sale of 1208 Chambers in an arms length transaction, prior to paying the
5 fines, restitution, and investigation fee obligations discussed in paragraphs G, I, and J,
6 respectively, of this Consent Order.
- 7 8. Prior to paying the fines, restitution, and investigation fee obligations discussed in paragraphs G,
8 I, and J, respectively, of this Consent Order, Respondent Murphy and her spouse: will keep 1208
9 Chambers in good condition and make all repairs that are reasonably necessary, and; will not
10 commit or allow any waste, impairment, or deterioration of 1208 Chambers, and; will promptly
11 notify the Department of all demands, proceedings, claims, and actions against Respondent
12 Murphy or her spouse or 1208 Chambers, including but not limited to any pending or threatened
13 action, by private or public entities to purchase or take any or all of 1208 Chambers through
14 condemnation, eminent domain, or any other means, and; will promptly notify the Department of
15 any loss or damage to 1208 Chambers.
- 16 9. Prior to paying the fines, restitution, and investigation fee obligations discussed in paragraphs G,
17 I, and J, respectively, of this Consent Order, Respondent Murphy and her spouse will keep 1208
18 Chambers insured against loss by fire, flood, theft and other hazards and risks reasonably
19 associated with 1208 Chambers due to its type and location.

20 It is further AGREED that, based in part upon these certifications, the Department has accepted a \$65,697.00 lien
21 (copy attached hereto excluding attachment) on 1208 Chambers to secure performance of Respondent Murphy's
22 agreement to pay fines, restitution, and an investigation fee as discussed in paragraphs G, I, and J, respectively, of
23 this Consent Order. It is further AGREED that Respondent Murphy has consented to the recording of this lien
24 upon entry of this Consent Order.

1 **L. Complete Cooperation with the Department (statements).** It is AGREED that Respondent
2 Murphy shall provide the Department truthful and complete sworn statements outlining her activities with respect
3 to America One or Robert Warnock or both, and any and all persons involved or in any way associated with
4 America One or Warnock or both, including but not limited to owners, employees, independent contractors,
5 agents, businesses and persons with whom America One or Warnock or both dealt, communicated, or otherwise
6 related. The "sworn statements" may take the form of affidavits, declarations, or deposition testimony, at the
7 Department's discretion. A failure to cooperate fully, truthfully and completely is a breach of this Consent Order.

8 **M. Complete Cooperation with the Department.** It is AGREED that Respondent Murphy shall
9 cooperate fully, truthfully and completely with the Department and provide any and all information known to her
10 relating in any manner to America One or Warnock or both and any and all persons involved or in any way
11 associated with America One or Warnock or both, including but not limited to owners, employees, independent
12 contractors, agents, businesses and persons with whom America One or Warnock or both dealt, communicated, or
13 otherwise related. It is further AGREED that Respondent Murphy shall provide any and all documents, writings
14 or materials, or objects or things of any kind in her possession or under her care, custody, or control that she is
15 authorized to possess, obtain, or distribute relating directly or indirectly to all areas of inquiry and investigation. It
16 is further AGREED that Respondent Murphy shall testify fully, truthfully and completely at any proceeding
17 related to any Department investigations or enforcement actions or both related to America One or Warnock or
18 both and any Respondents named therein. A failure to cooperate fully, truthfully and completely is a breach of
19 this Consent Order.

20 **N. Severability.** In the event that any provision of this Consent Order is held invalid or unenforceable,
21 that provision shall be severed from this Consent Order and the remaining provisions of this Consent Order shall
22 remain valid and enforceable.

23 **O. Non-Compliance with Order.** It is AGREED that Respondent Murphy understands that failure to
24 abide by the terms and conditions of this Consent Order may result in further legal action by the Director. In

1 the event of such legal action, Respondent Murphy may be responsible to reimburse the Director for the cost
2 incurred in pursuing such action, including but not limited to, attorney fees.

3 **P. Voluntarily Entered.** It is AGREED that Respondent Murphy has voluntarily entered into this
4 Consent Order, which is effective when signed by the Director's designee.

5 **Q. Completely Read, Understood, and Agreed.** It is AGREED that Respondent Murphy has read this
6 Consent Order in its entirety and fully understands and agrees to all of the same.

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CONSENT ORDER

1 **RESPONDENT:**

2
3 Rosemary D. Murphy
4 Rosemary D. Murphy

6/7/06
Date

5
6 STATE OF WASHINGTON)
7) ss.
8 COUNTY OF PIERCE)

9 I certify that I know or have satisfactory evidence that Rosemary D. Murphy is the person who appeared before
10 me, and said person acknowledged that she signed this instrument, on oath stated that she is authorized to
11 execute the instrument and acknowledged it on this 7th day of June, 2006, to be the free and voluntary
12 act of such party for the uses and purposes mentioned in this instrument.

11 Dated: 6/7/06

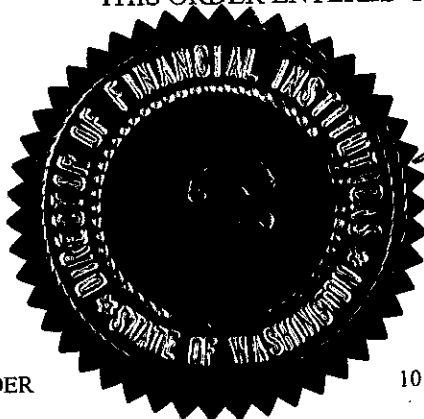
Paulette Schmale
NOTARY PUBLIC in and for the State of
Washington, residing at Tacoma, WA.

13
14 Douglas D. Sulkosky
15 Douglas D. Sulkosky, WSBA No. 7855
16 Attorney at Law
17 Attorney for Respondent Murphy

6/7/06
Date

18 **DO NOT WRITE BELOW THIS LINE**

19
20 THIS ORDER ENTERED THIS 7th DAY OF JUNE, 2006.



Chuck Cross
CHUCK CROSS
Director
Division of Consumer Services
Department of Financial Institutions

CONSENT ORDER