

Terms Completed

**CONSENT ORDER SUMMARY - Case Number: C-07-029**

**Name(s)** Edward S. Rotstein

**Order Number** C-07-029-10-CO01

**Effective Date** September 23, 2010

**License Number** 31526  
(Revoked, suspended, stayed, application denied or withdrawn)  
 If applicable, you must specifically note the ending dates of terms.

**License Effect** Application denied.

**Not Apply until** \_\_\_\_\_

**Prohibition/Ban until** Seven years from date of entry of CO.

<b>Restitution</b>	\$ 369	Due 9/15/2010	Paid Yes	Date 8/26/10
<b>Investigation Costs</b>	\$ 11,300	Due 9/15/2010	Paid Yes	Date 8/26/10
<b>Assessment(s)</b>	\$ N/A	Due	Paid N/A	Date
<b>Fine</b>	\$ 25,000	Respondent paid \$10,000 and signed a Confession of Judgment for \$15,000*	Paid Part Paid Balance	Date 8/26/10 Date 12/1/10

\*Confession of Judgment was satisfied, never filed, and has been redacted.

**Other** Respondent admitted and stipulated to an extensive list of facts attached to the CO as Attachment A.  
Respondent agreed to keep the Department aware of his mailing address and phone number, and to give us notice if either changes.  
Respondent agreed to cooperate fully, truthfully and completely with the Department and the Attorney General's Office relating to our on-going investigation/prosecution of America One Finance, Inc.

**Special Instructions** \_\_\_\_\_

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**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING  
Whether there has been a violation of the Mortgage  
Broker Practices Act of Washington by:  
  
EDWARD S. ROTSTEIN,  
  
Respondent.

NO. C-07-029-10-CO01  
CONSENT ORDER

COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Deborah Bortner, Division Director, Division of Consumer Services, and Edward S. Rotstein, by and through his attorney John A. Bender, and finding that the issues raised in the above-captioned matter may be economically and efficiently settled, agree to the entry of this Consent Order pursuant to RCW 19.146, the Mortgage Broker Practices Act, and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

**AGREEMENT AND ORDER**

On August 20, 2009, the Department of Financial Institutions, Division of Consumer Services (Department) entered Amended Statement of Charges No. C-07-029-09-SC02 (Amended Statement of Charges) against Respondent Edward S. Rotstein (Respondent Rotstein). The parties intend this Consent Order to fully resolve the Factual Allegations raised in the Amended Statement of Charges, a copy of which is attached.

Based upon the foregoing:

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

**B. Waiver of Hearing.** It is AGREED that Respondent Rotstein has been informed of the right to a hearing before an administrative law judge, and that he hereby waives his right to a hearing and any and all administrative and judicial review of the issues raised in this matter, or of the resolution reached herein. Accordingly, Respondent Rotstein, by his signature below, withdraws his appeal to the Office of Administrative Hearings.

**C. Admissions and Stipulation to Facts.** It is AGREED that Respondent Rotstein admits and stipulates to the facts set forth in Attachment A, which is incorporated into this Consent Order as though set out in full. It is

1 FURTHER AGREED that with the exception of the admissions and stipulation noted in Attachment A,  
2 Respondent Rotstein neither admits nor denies any violation of the Mortgage Broker Practices Act.

3 **D. License Application Denial.** It is AGREED and ORDERED that Respondent Rotstein's application for a  
4 loan originator license is denied.

5 **E. Prohibition from Industry.** It is AGREED and ORDERED that Respondent Rotstein is prohibited from  
6 participating in the conduct of the affairs of any mortgage broker licensed by the Department, or any mortgage  
7 broker subject to licensure or regulation by the Department, for seven years from the date of entry of this Consent  
8 Order. The prohibition extends to participation in any capacity, including but not limited to: (1) any financial  
9 capacity whether active or passive; (2) as an owner, partner, officer, director, principal, designated broker,  
10 employee, independent contractor, or loan originator; (3) any management, control, oversight or maintenance of  
11 any trust account(s) in any way related to any residential mortgage transaction; or (4) receiving, disbursing,  
12 managing or controlling in any way, trust funds in any way related to any residential mortgage transaction.

13 **F. Fine.** It is AGREED and ORDERED that Respondent Rotstein shall pay to the Department a fine of  
14 \$25,000, in the form of a cashier's check made payable to the "Washington State Treasurer" as follows:

- 15 1. \$10,000 prior to entry of the Consent Order; and
- 16 2. \$15,000 to be addressed by a Confession of Judgment discussed below in paragraph G.

17 **G. Declaration of Financial Information and Confession of Judgment.** It is AGREED that Respondent  
18 Rotstein has provided the Department with a comprehensive Declaration of Financial Information describing his  
19 current financial conditions and representing his current inability to pay the balance of the fine agreed to in  
20 Paragraph F of this Consent Order. It is further AGREED that, based on this Declaration, the Department has  
21 accepted a \$15,000 Confession of Judgment from Respondent Rotstein for the balance of fine. A copy of this  
22 Confession of Judgment is attached and incorporated into this Consent Order as though set out in full. Consistent  
23 with chapter 4.60 of the Revised Code of Washington, the Department may immediately seek entry of the  
24 judgment. Respondent Rotstein shall, upon the Department's request, fully and promptly cooperate with the  
25 Department in its efforts to get the judgment entered by the superior court.

**H. Change of Address.** It is AGREED and ORDERED that for the duration this Consent Order is in effect,  
unless otherwise agreed to in writing by the Department, Respondent Rotstein shall provide the Department with a

1 mailing address and telephone number at which he can be contacted, and shall notify the Department in writing of  
2 any changes to his mailing address or telephone number within fifteen calendar days of any such change.

3 **I. Restitution.** It is AGREED and ORDERED that prior to entry of this Consent Order, Respondent  
4 Rotstein shall pay \$369.00 in restitution to consumers who were overcharged for credit reports.

5 **J. Investigation Fee.** It is AGREED and ORDERED that prior to entry of this Consent Order, Respondent  
6 Rotstein shall pay to the Department an investigation fee of \$11,300 in the form of a cashier's check made payable  
7 to the "Washington State Treasurer."

8 **K. Rights of Non-Parties.** It is AGREED that the Department does not represent or have the consent of any  
9 person or entity not a party to this Consent Order to take any action concerning their personal legal rights. It is  
10 further AGREED that for any person or entity not a party to this Consent Order, this Consent Order does not limit  
11 or create any private rights or remedies against Respondent Rotstein, limit or create liability for Respondent  
12 Rotstein, or limit or create defenses of Respondent Rotstein to any claims.

13 **L. Complete Cooperation with the Department and the Office of the Attorney General.** It is AGREED  
14 that Respondent Rotstein shall cooperate fully, truthfully and completely with the Department and the Office of  
15 Attorney General, and provide any and all information known to him relating in any manner to America One  
16 Finance, Inc. conducting or engaging in the business of a mortgage broker. It is further AGREED that Respondent  
17 Rotstein shall provide any and all documents, writings, materials, objects or evidence of any kind in his possession  
18 or under his care, custody, or control that he is authorized to possess, obtain, or distribute relating directly or  
19 indirectly to all areas of inquiry and investigation. A failure to cooperate fully, truthfully and completely is a  
20 breach of this Consent Order. It is further AGREED that Respondent Rotstein shall testify fully, truthfully and  
21 completely at any proceeding related to the Department's investigation and enforcement actions related to  
22 America One Finance, Inc.

23 **M. Non-Compliance with Order.** It is AGREED that Respondent Rotstein 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  
25 the event of such legal action, Respondent Rotstein may be responsible to reimburse the Director for the cost  
incurred in pursuing such action, including but not limited to, attorney fees.

1           **N. Voluntarily Entered.** It is AGREED that the undersigned Respondent Rotstein has voluntarily entered  
2 into this Consent Order, which is effective when signed by the Director's designee.

3           **O. Completely Read, Understood, and Agreed.** It is AGREED that Respondent Rotstein has read this  
4 Consent Order in its entirety and fully understands and agrees to all of the same.

5 RESPONDENT:

6 [Redacted]

7 Edward S. Rotstein

6/10/2010  
Date

8 Approved as to form:  
9 Ryan Swanson & Cleveland, PLLC

9 [Redacted]

10 John A. Bender, WSBA No. 19540  
11 Attorneys for Respondent

6/18/2010  
Date

12 DO NOT WRITE BELOW THIS LINE

13 THIS ORDER ENTERED THIS 23<sup>rd</sup> DAY OF September, 2010.



14 [Redacted]  
15 DEBORAH BORTNER  
16 Director, Division of Consumer Services  
17 Department of Financial Institutions

18 Presented by:

19 [Redacted]

20 ANTHONY W. CARTER  
21 Enforcement Attorney

22 Approved by:

23 [Redacted]

24 JAMES R. BRUSSELBACK  
25 Enforcement Chief

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**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CONSUMER SERVICES**

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

EDWARD S. ROTSTEIN,  
Respondent.

NO. C-07-029-09-SC02

AMENDED STATEMENT OF CHARGES and NOTICE  
OF INTENT TO ENTER AN ORDER TO DENY  
LICENSE APPLICATION, ORDER RESTITUTION,  
IMPOSE FINES, PROHIBIT FROM INDUSTRY, AND  
COLLECT INVESTIGATION FEE

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**INTRODUCTION**

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act)<sup>1</sup>. After having conducted an investigation pursuant to RCW 19.146.310 and RCW 19.146.235, and based upon the facts available on December 28, 2007, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, issued Statement of Charges C-07-029-07-SC01. Thereafter, the Department's continuing investigation revealed information that necessitates amending the Statement of Charges. Amendments to Section I include changes to paragraph 1.1, the addition of new paragraph 1.2, changes to paragraphs 1.3, 1.4, and 1.5, and the addition of new paragraphs 1.6, 1.7, 1.8, and 1.9. Amendments to Section II include changes to paragraphs 2.1 and 2.2. Amendments to Section III include changes to paragraph 3.1. Amendments to Section IV include changes to paragraphs 4.3, 4.4, and 4.5. Accordingly, based upon the facts available as of the date of this Amended Statement of Charges, C-07-029-09-SC02, the Director's designee finds as follows:

**I. FACTUAL ALLEGATIONS**

**1.1 Respondent Edward S. Rotstein** (Rotstein) submitted an application to the Department of Financial Institutions of the State of Washington (Department) for a loan originator license on or about December 7, 2006. The application indicated that Rotstein had been employed by Washington Loan Center (Washington Loan) beginning in July 2006, and before that had been employed by America One Finance, Inc. (America One) from October 2004 through July 2006.

<sup>1</sup> The Act, effective in 1994, was amended in 2006, with the changes effective January 1, 2007. Unless otherwise noted, all references to RCW 19.146 in this Statement of Charges refer to the 2007 Act.

1 **1.2 Misrepresentations of Borrowers' Information.** In at least seven residential mortgage loan transactions, Respondent  
2 Rotstein misrepresented information to lenders in order to obtain residential mortgage loans. The information misrepresented  
3 included borrowers' income, assets, liabilities, and intent to occupy the properties as their primary residence.

4 A. Borrower 1. In or around February 2005, Respondent assisted Borrower 1 obtain a \$145,000 residential mortgage  
5 loan to refinance Property 1A. Respondent represented to the lender that Borrower 1 had \$6,133 in Bank Account 1.  
6 Respondent provided the lender with a Request for Verification of Deposit form (VOD) for Bank Account 1. The  
7 "Request" portion of the VOD was signed and dated February 23, 2005 by Respondent, and requested verification  
8 that the balance in Bank Account 1 was \$3,890. The "To Be Completed by Depository" portion of the VOD was  
9 signed and dated February 24, 2005 by a representative of the bank, and listed the current balance in Bank Account 1  
10 as \$2,777.36, with an average balance for the previous two months of \$1,256.86. Respondent represented to the  
11 lender that Borrower 1 would be occupying Property 1A as their primary residence.

12 In or around March 2005, Respondent assisted Borrower 1 in obtain a \$160,008 residential mortgage loan to  
13 purchase Property 1B. Respondent represented to the lender that Borrower 1 had \$47,890 in Bank Account 1.  
14 Respondent provided the lender with a Request for Verification of Deposit form (VOD) for Bank Account 1. The  
15 "Request" portion of the VOD was signed and dated February 23, 2005 by Respondent, and requested verification  
16 from the bank that the balance in Bank Account 1 was \$47,890. The "To Be Completed by Depository" portion of  
17 the VOD was signed and dated February 24, 2005 by a representative of the bank, and listed the current balance in  
18 Bank Account 1 as \$48,777.36, with an average balance for the previous two months of \$45,256.86. Respondent  
19 represented to the lender that Borrower 1 would be occupying Property 1B as their primary residence, and that  
20 Property 1A was a rental property with a mortgage liability of \$139,500 generating \$825 per month in rental income.  
21 Respondent did not disclose to the lender that he had just assisted Borrower 1 in obtaining a \$145,000 residential  
22 mortgage loan on Property 1A, and had represented to that other lender that Borrower 1 would be occupying  
23 Property 1A as their primary residence.

24 B. Borrower 2. In or around October 2005, Respondent assisted Borrower 2 obtain a \$260,000 residential mortgage  
25 loan to refinance Property 2A. Respondent represented to the lender that Borrower 2 earned \$5,500 per month  
working as "maintenance" for "Bluestone Properties Inc." Respondent represented to the lender that Borrower 2  
would be occupying Property 2A as their primary residence. Respondent did not disclose to the lender that he was  
also assisting Borrower 2 obtain a \$340,000 residential mortgage loan to purchase Property 2B (see below), was  
representing to that other lender that Borrower 1 would be occupying Property 2B as their primary residence, or that  
Property 2A was or would become a rental property.

In or around October 2005, Respondent assisted Borrower 2 obtain a \$340,000 residential mortgage loan to purchase  
Property 2B. Respondent represented to the lender that Borrower 2 earned \$7,200 per month working as  
"maintenance" for "Bluestone Properties Inc." Respondent represented to the lender that Borrower 2 would be  
occupying Property 2B as their primary residence, and that Property 2A was or would become a rental property  
generating \$1,012 per month in rental income.

C. Borrower 3. In or around February 2006, Respondent assisted Borrower 3 obtain two non-residential mortgage  
loans totaling \$283,500 to refinance Property 3A. Respondent represented to the lender that Borrower 3 earned  
\$6,000 per month working as the owner of "Metropolitan Towncar," and earned \$2,000 per month working as a  
"caregiver" for "Family Resource Home Care Inc." (total monthly income of \$8,000). Respondent represented to  
the lender that Borrower 3 had \$8,870 in Bank Account 3. Respondent provided the lender with copies of bank  
statements for Bank Account 3 listing the balances as \$8,870.36 (checking) and \$0.99 (savings) as of January 11,  
2006 and as \$9,060.85 (checking) and \$0.99 (savings) as of February 9, 2006.

1 In or around February 2006, Respondent assisted Borrower 3 obtain two residential mortgage loans totaling  
2 \$492,250 to purchase Property 3B. Respondent represented to the lender that Borrower 3 earned \$8,000 per month  
3 working as the owner of "Metropolitan Towncar," and earned \$3,000 per month working as a "caregiver" for  
4 "Family Resource Home Care Inc." (total monthly income of \$11,000). Respondent represented to the lender that  
5 Borrower 3 had \$63,902 in Bank Account 3. Respondent provided the lender with a bank verification for Bank  
6 Account 3 listing the balances as \$9,061.20 (checking) and \$55,000.99 (savings) as of February 17, 2006.  
7 Respondent represented to the lender that Property 3A had a mortgage liability of \$220,000. Respondent did not  
8 disclose to the lender that he was also assisting Borrower 3 obtain a \$283,000 mortgage liability for property 3B.

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10 D. Borrower 4. In or around April 2006, Respondent assisted Borrower 4 obtain a \$295,000 non-residential mortgage  
11 loan to refinance Property 4A. Respondent represented to the lender that Borrower 4 earned \$7,000 per month as the  
12 "owner" of "Alexx BB International," and provided the lender with documentation to support this representation,  
13 including copies of Borrower 4's federal income tax returns for 2004 and 2005. Respondent represented to the  
14 lender that Borrower 4 had approximately \$12,000 in their bank accounts, including \$1,771 in Bank Account 4.  
15 Respondent provided the lender with online bank records listing the balances in Bank Account 4 as \$445.81  
16 (checking) and \$1,771.57 (savings) as of March 13, 2006.

17  
18 In or around May 2006, Respondent assisted Borrower 4 obtain two residential mortgage loans totaling \$780,000 to  
19 purchase Property 4B. Respondent represented to the lender that Borrower 4 earned \$16,000 per month as the  
20 "owner" of "Alexx BB International." Respondent represented to the lender that Borrower 4 had \$62,216 in Bank  
21 Account 4. Respondent provided the lender with copies of bank statements for Bank Account 4 listing the balances  
22 as 5,445.81 (checking) and \$55,771.57 (savings) as of March 13, 2006. In or around March 2007, a Notice of  
23 Trustee's Sale was recorded scheduling a Trustee's Sale for Property 4B and indicating Borrower 4 had not made  
24 any payments on at least one of the underlying residential mortgage loans since at least August 2006. In or around  
25 June 2007, the lender obtained Property 4B with a Trustee's Deed (foreclosure). In or around August 2007, Property  
4B was sold for \$655,000, resulting in a loss to the lender of at least \$125,000.

E. Additional Consumer Complaints. The Department has received written complaints from two additional borrowers  
alleging Respondent misrepresented their income to lenders in order to obtain residential mortgage loans for them.

1.3 **Overcharging for Credit Reports.** The Department reviewed 82 residential mortgage loans originated by

Respondent Rotstein while employed with America One. In 52 of the transactions reviewed, Respondent Rotstein charged  
borrowers more for credit reports than he paid.

1.4 **Failure to Maintain Trust Account.** In most of the transactions reviewed, Respondent Rotstein instructed closing  
agents to pay him directly for credit reports from third-party providers. In 46 of the transactions reviewed, closing agents paid  
Respondent Rotstein directly; in 12 of the transactions, the closing agents paid America One. Neither Respondent Rotstein  
nor America One ever received authorization from the Department to accept trust funds.

1.5 **Commingling and Conversion of Trust Funds.** Respondent Rotstein received moneys from 46 borrowers that were  
intended for third-party providers, and deposited the moneys he received into non-trust accounts under his control, thereby  
converting trust funds to a use other than originally intended.

1 **1.6 False, Deceptive, or Misleading Advertising.** In June, July, and August 2006, Respondent Rotstein advertised in  
2 *The Perspective*, a Russian-language periodical marketing products and services. Respondent Rotstein advertised financing  
3 of residential real estate, and offered borrowers exceptionally low interest rates and mortgage payments with no negative  
4 amortization. Included in his advertisement was a table demonstrating the low monthly payment, including a \$1,330 payment  
5 for a \$400,000 loan. The advertisement offered loan programs with starting interest rates as low as 1.25%, 0-5% down-  
6 payments, and free refinancing. Respondent Rotstein's advertising disclosed triggering terms,<sup>2</sup> but did not make the required  
7 disclosures, including the terms of repayment.<sup>3</sup> Respondent Rotstein's advertising further disclosed a simple periodic interest  
8 rate without conspicuously disclosing the annual percentage rate implied by the simple interest rate.

9 **1.7 Disclosure Violations - State Law Requirements.** Respondent Rotstein was responsible for providing, within three  
10 days of receipt of an application for a residential mortgage, written disclosure of the annual percentage rate, finance charge,  
11 amount financed, total amount of all payments, number of payments, amount of each payment, and the amount of discount  
12 points or prepaid interest. In addition, Respondent Rotstein was required to disclose the conditions and terms under which any  
13 loan terms may change between the time of disclosure and closing of the loan, and, with variable rate loans, the circumstances  
14 under which the variable rate may increase, any limitation on the increase, the effect of an increase, and an example of the  
15 payment terms resulting from an increase. In 38 of the transactions reviewed, Respondent Rotstein failed to provide the  
16 required disclosures.

17 **1.8 Disclosure Violations - Real Estate Settlement Procedures Act.** Respondent Rotstein was responsible for  
18 providing, within three days of receipt of an application for a residential mortgage, disclosure documents detailing the terms of  
19 the proposed loan. In 46 of the transactions reviewed, Respondent Rotstein failed to provide a good faith estimate of the cost  
20 of the credit report.

21 **1.9 Disclosure Violations - Truth in Lending Act.** Respondent Rotstein was responsible for providing, within three days  
22 of receipt of an application for a residential mortgage, disclosure documents detailing the terms of the proposed loan. In 38 of  
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24 <sup>2</sup> Triggering terms include the down payment (by percentage or amount), the amount of any monthly payment or finance charge, the  
number of payments, or the period of repayment. Use of any of these terms triggers disclosure of the annual percentage rate, the terms  
of repayment, and the amount or percentage of any down payment.

25 <sup>3</sup> The terms of repayment for the adjustable rate mortgage loans advertised would include the number and timing of payments, the  
potential largest and smallest payment, and the fact that other payments would vary between those amounts.

1 the transactions reviewed, Respondent Rotstein provided a Truth In Lending Disclosure Statement that: understated the  
2 Annual Percentage Rate of the proposed loan; understated the number and amount of the monthly payments for the proposed  
3 loan; failed to disclose that the loan contained a variable rate feature; and that failed to disclose that the loan was secured by  
4 real property.

5 **1.10 Continuing Investigation.** The Department's investigation into the alleged violations of the Act by Respondent  
6 Rotstein continues to date.

## 8 II. GROUNDS FOR ENTRY OF ORDER

9 **2.1 Prohibited Practices.** Based on the Factual Allegations set forth in Section I above, Respondent Rotstein is in  
10 apparent violation of RCW 19.146.0201:

- 11       ▪ (1) by directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or  
12       lenders or to defraud any person, by misrepresented information to lenders in order to obtain residential  
13       mortgage loans;
- 14       ▪ (2) by engaging in unfair or deceptive practices toward any person, including the use of false, deceptive,  
15       or misleading advertising; overcharging for credit reports; collecting unearned fees; making false and  
16       deceptive disclosures of financing terms, and misrepresented information to lenders in order to obtain  
17       residential mortgage loans;
- 18       ▪ (3) by obtaining property by fraud or misrepresentation;
- 19       ▪ (6) by failing to make disclosures to loan applicants as required by RCW 19.146.030;
- 20       ▪ (7) by making false or deceptive statements or representations with regard to the rates or other financing  
21       terms or conditions for a residential mortgage loan;
- 22       ▪ (10) by advertising a rate of interest without conspicuously disclosing the annual percentage rate implied  
23       by such rate of interest, or otherwise fail to comply with the advertising requirements of the Truth In  
24       Lending Act, 15 U.S.C. §1664(d) and Regulation Z, 12 C.F.R. §226.24(b) and (c);
- 25       ▪ (10) by failing to comply with the disclosure requirements of the Real Estate Settlement Procedures Act,  
26       12 U.S.C. § 2601 and Regulation X, 24 C.F.R. §3500.7, and the Truth in Lending Act, 15 U.S.C.  
27       §1638 and Regulation Z, 12 C.F.R. §226.18; and
- 28       ▪ (12) by charging and collecting, or attempting to charge or collect, any fee prohibited by  
29       RCW 19.146.030.<sup>4</sup>

<sup>4</sup> All citations in paragraph 2.1 are to the 1994 version of the Mortgage Broker Practices Act.

1 **2.2 Overcharging for Credit Reports.** Based on the Factual Allegations set forth in Section I above, Respondent  
2 Rotstein is in apparent violation of RCW 19.146.070(2)(b) (1994) for charging more for credit reports than the actual cost.

3 **2.3 Trust Account.** Based on the Factual Allegations set forth in Section I above, Respondent Rotstein is in apparent  
4 violation of RCW 19.146.050 (1994) and WAC 208-660-08025 (2002) for failing to deposit funds received from or on  
5 behalf of a borrower for payment of third-party provider services in a trust account of a federally insured financial institution  
6 located in this state, prior to the end of the third business day following receipt of such monies, and for commingling  
7 operating funds with trust account funds.

8 **2.4 Requirement to Demonstrate Character and General Fitness.** Based on the Factual Allegations set forth in  
9 Section I above, Respondent Rotstein has failed to meet the requirements of RCW 19.146.310(1)(g) by failing to  
10 demonstrate character and general fitness such as to command the confidence of the community and to warrant a belief that  
11 the business will be operated honestly and fairly within the purposes of the Act.

### 12 13 **III. AUTHORITY TO IMPOSE SANCTIONS**

14 **3.1 Authority to Deny Application for Loan Originator License.** Pursuant to RCW 19.146.220(2), the Director may  
15 deny licenses to loan originators for any violation of the Act. Pursuant to RCW 19.146.220(2)(a) (1994), the Director may  
16 deny licenses to loan originators for any violation of RCW 19.146.0201(1) through (9). Pursuant to RCW 19.146.310(2),  
17 the Director shall not issue a loan originator license if the conditions of RCW 19.146.310(1) have not been met.

18 **3.2 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2)(e), the Director may order restitution for any  
19 violation of the Act. Pursuant to RCW 19.146.220(2)(d) (1994), the Director may order restitution for any violation of  
20 RCW 19.146.0201(1) through (9) or (12); or RCW 19.146.030 through RCW 19.146.080.

21 **3.3 Authority to Impose Fine.** Pursuant to RCW 19.146.220(3)(a), the Director may impose fines on an employee,  
22 loan originator, independent contractor, agent of the licensee, or other person subject to the Act for any violations of  
23 RCW 19.146.0201(1) through (9) or (13); or RCW 19.146.030 through RCW 19.146.080. Pursuant to  
24 RCW 19.146.220(2)(c) (1994), the Director may impose fines on a licensee, employee, or loan originator of the licensee,  
25 for any violation of RCW 19.146.0201(1) through (9) or (12); or RCW 19.146.030 through RCW 19.146.080.

1 **3.4 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(5)(a), the Director may issue orders  
2 removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both,  
3 any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under  
4 the Act for any violation of RCW 19.146.0201(1) through (9) or (13); or RCW 19.146.030 through RCW 19.146.080.  
5 Pursuant to RCW 19.146.220(2)(e) (1994), the Director may issue orders removing from office or prohibiting from  
6 participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan  
7 originator of any licensed mortgage broker or any person subject to licensing under the Act for any violation of  
8 RCW 19.146.0201(1) through (9) or (12); or RCW 19.146.030 through RCW 19.146.080.

9 **3.5 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), the Department will charge forty-eight  
10 (\$48) per hour for an examiner's time devoted to an investigation of the books and records of a licensee or other person  
11 subject to the Act.

#### 12 13 **IV. NOTICE OF INTENT TO ENTER ORDER**

14 Respondent's violations of the provisions of chapter 19.146 RCW, as set forth in the above Factual Allegations,  
15 Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis for the entry of an Order under  
16 RCW 19.146.220, RCW 19.146.221, RCW 19.146.223, and RCW 19.146.310. Therefore, it is the Director's intent to  
17 ORDER that:

18 **4.1** Respondent Edward S. Rotstein's application for a loan originator license be denied;

19 **4.2** Respondent Edward S. Rotstein pay restitution to borrowers who were overcharged for credit reports;

20 **4.3** Respondent Edward S. Rotstein pay a fine. As of the date of this Amended Statement of Charges, the fine totals at  
21 least \$50,000.

22 **4.4** Respondent Edward S. Rotstein be prohibited from participation in the conduct of the affairs of any mortgage broker  
23 subject to licensure by the Director, in any manner, for a period of ten (10) years; and

24 **4.5** Respondent Edward S. Rotstein pay an investigation fee. As of the date of this Amended Statement of Charges, the  
25 investigation fee totals at least \$9,500.

1 **V. AUTHORITY AND PROCEDURE**

2 This Amended Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist, Deny License  
3 Application, Order Restitution, Impose Fines, Prohibit from Industry, and Collect Investigation Fee (Amended Statement of  
4 Charges) is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW 19.146.223, and  
5 RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (the Administrative Procedure Act). Respondent  
6 Rotstein may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND  
7 OPPORTUNITY FOR HEARING accompanying this Amended Statement of Charges.

8  
9 Dated this 20<sup>th</sup> day of August, 2009.

10 [Redacted Signature]

11 DEBORAH BÖRTNER  
12 Director, Division of Consumer Services  
13 Department of Financial Institutions

14 Presented by:

15 [Redacted Name]

16 ANTHONY W. CARTER  
17 Enforcement Attorney



18 Approved by:

19 [Redacted Name]

20 JAMES R. BRUSSELBACK  
21 Enforcement Chief

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**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING  
Whether there has been a violation of the  
Mortgage Broker Practices Act of Washington by:  
  
EDWARD S. ROTSTEIN,  
Respondent.

NO. C-07-029-07-SC01

STATEMENT OF CHARGES and NOTICE OF  
INTENT TO ENTER AN ORDER TO DENY  
LICENSE APPLICATION, ORDER  
RESTITUTION, IMPOSE FINES, PROHIBIT  
FROM INDUSTRY, AND COLLECT  
INVESTIGATION FEE

**INTRODUCTION**

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act)<sup>1</sup>. Having conducted investigations pursuant to RCW 19.146.235 and RCW 19.146.310, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

**I. FACTUAL ALLEGATIONS**

**1.1 Respondent Edward S. Rotstein (Respondent Rotstein)** submitted an application to the Department of Financial Institutions of the State of Washington (Department) for a loan originator license under Washington Loan Center, Inc., a mortgage broker licensed under the Act. The on-line application was received by the Department on or about December 7, 2006.

**1.2 Prohibited Practices.** On April 13, 2005, the Department received a complaint alleging that on March 2005, while employed by America One Finance, Inc. (America One), Respondent Rotstein had originated residential mortgage loans for borrowers on terms less favorable than he had promised. America One provided the Department with a schedule listing approximately one hundred (100) residential mortgage loans originated by Respondent Rotstein from October 2004 through July 2006. The Department obtained the

<sup>1</sup> The Act, effective in 1994, was amended in 2006, with the changes effective January 1, 2007. Unless otherwise noted, all references to RCW 19.146 in this Statement of Charges refer to the 2007 Act.

1 subject loan file, along with a sample of nine other residential mortgage loan transactions originated by  
2 Respondent Rotstein for America One from January 2005 through June 2006. All ten files were reviewed for  
3 compliance with the 1994 Act. In nine of the ten transactions reviewed, Respondent Rothstein charged  
4 borrowers more for credit reports than he paid.

5 **1.3 Failure to Maintain Trust Account.** Moneys received by a mortgage broker from or on behalf of a  
6 borrower for payment to third-party providers are deemed to be held in trust immediately upon receipt by the  
7 broker, and must be deposited into established trust accounts. In the alternative, brokers can ensure they do  
8 not receive trust funds by instructing closing agents to pay all third-party service providers directly. In seven  
9 of the ten transactions reviewed, Respondent Rotstein instructed closing agents to pay for credit reports from  
10 third-party providers directly to him. In seven of the transactions, closing agents paid Respondent Rotstein; in  
11 the other three, the closing agents paid America One. As of July 2006, neither Respondent Rotstein nor  
12 America One had received authorization from the Department to accept trust funds.

13 **1.4 Commingling and Conversion of Trust Funds.** Respondent Rotstein received moneys from  
14 borrowers that were intended for third-party providers, and deposited the moneys he received into non-trust  
15 accounts under his control. Respondent Rotstein failed to refund to borrowers the credit report overcharges,  
16 thereby converting trust funds to a use other than originally intended.

17 **1.5 Continuing Investigation.** The Department's investigation into the alleged violations of the Act by  
18 Respondent Rotstein continues to date.

## 19 20 **II. GROUNDS FOR ENTRY OF ORDER**

21 **2.1 Prohibited Practices.** Based on the Factual Allegations set forth in Section I above, Respondent  
22 Rotstein is in apparent violation of RCW 19.146.0201(1) and (2) (1994) for directly or indirectly employing a  
23 scheme, device or artifice to defraud or mislead borrowers or lenders or any person, and for engaging in an  
24 unfair or deceptive practice toward any person; and is in apparent violation of RCW 19.146.0201(3) (1994)  
25 for obtaining property by fraud or misrepresentation; and is in apparent violation of RCW 19.146.0201(10)

1 (1994) for failing to comply with the requirements of the real estate settlement procedures act (12 U.S.C §  
2 2601 and Regulation X, 24 C.F.R. §3500) in connection with a residential mortgage loan; and is in apparent  
3 violation of RCW 19.146.0201(12) (1994) for charging and collecting, or attempting to charge or collect, any  
4 fee prohibited by RCW 19.146.030.

5 **2.2 Prohibited Fees.** Based on the Factual Allegations set forth in Section I above, Respondent Rotstein is  
6 in apparent violation of RCW 19.146.030(4) (1994) for charging fees inuring to the benefit of a mortgage  
7 broker in excess of the fees disclosed on the initial written disclosures where the fees were reasonably  
8 foreseeable by the mortgage broker at the time the initial written disclosures were provided to borrowers,  
9 and/or where the mortgage broker failed to provide the borrowers, no less than three business days prior to the  
10 signing of the loan closing documents, a clear written explanation of the fees and the reason for charging fees  
11 exceeding those which were previously disclosed.

12 **2.3 Trust Account.** Based on the Factual Allegations set forth in Section I above, Respondent Rotstein is  
13 in apparent violation of RCW 19.146.050 (1994) and WAC 208-660-08025 (2002) for failing to deposit funds  
14 received from or on behalf of a borrower for payment of third-party provider services in a trust account of a  
15 federally insured financial institution located in this state, prior to the end of the third business day following  
16 receipt of such monies, and for commingling operating funds with trust account funds.

17 **2.4 Requirement to Demonstrate Character and General Fitness.** Based on the Factual Allegations set  
18 forth in Section I above, Respondent Rotstein has failed to meet the requirements of RCW 19.146.310(1)(g)  
19 by failing to demonstrate character and general fitness such as to command the confidence of the community  
20 and to warrant a belief that the business will be operated honestly and fairly within the purposes of the Act.

### 21 III. AUTHORITY TO IMPOSE SANCTIONS

22 **3.1 Authority to Deny Application for Loan Originator License.** Pursuant to RCW 19.146.220(1), the  
23 Director may deny licenses to loan originators for any violation of the Act. Pursuant to  
24 RCW 19.146.220(2)(a) (1994), the Director may deny licenses to loan originators for any violation of  
25

1 RCW 19.146.0201(1) through (9). Pursuant to RCW 19.146.310(2), the Director shall not issue a loan  
2 originator license if the conditions of RCW 19.146.310(1) have not been met by the applicant, and shall notify  
3 the loan originator applicant and any mortgage brokers listed on the application of the denial.

4 **3.2 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2)(e), the Director may order  
5 restitution for any violation of the Act. Pursuant to RCW 19.146.220(2)(d) (1994), the Director may order  
6 restitution for any violation RCW 19.146.0201(1) through (9) or (12); or RCW 19.146.030 through RCW  
7 19.146.080.

8 **3.3 Authority to Impose Fine.** Pursuant to RCW 19.146.220(3)(a), the Director may impose fines on an  
9 employee, loan originator, independent contractor, agent of the licensee, or other person subject to the Act for  
10 any violations of RCW 19.146.0201(1) through (9) or (13); or RCW 19.146.030 through RCW 19.146.080.  
11 Pursuant to RCW 19.146.220(2)(c) (1994), the Director may impose fines on a licensee, employee, or loan  
12 originator of the licensee, or other person subject to the Act, for any violation of RCW 19.146.0201(1)  
13 through (9) or (12); or RCW 19.146.030 through RCW 19.146.080.

14 **3.4 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(5)(a), the Director may issue  
15 orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed  
16 mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker  
17 or any person subject to licensing under the Act for any violation of RCW 19.146.0201(1) through (9) or (13);  
18 or RCW 19.146.030 through RCW 19.146.080. Pursuant to RCW 19.146.220(2)(e) (1994), the Director may  
19 issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed  
20 mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker  
21 or any person subject to licensing under the Act for any violation of RCW 19.146.0201(1) through (9) or (12);  
22 or RCW 19.146.030 through RCW 19.146.080.

23 **3.5 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), the Department will charge forty-  
24 eight (\$48) per hour for an examiner's time devoted to an investigation of the books and records of a licensee or  
25 other person subject to the Act.

1 **IV. NOTICE OF INTENT TO ENTER ORDER**

2 Respondent's violations of the provisions of chapter 19.146 RCW, as set forth in the above Factual  
3 Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis for the entry of an  
4 Order under RCW 19.146.220, RCW 19.146.221, RCW 19.146.223, and RCW 19.146.310. Therefore, it is the  
5 Director's intent to ORDER that:

6 **4.1** Respondent Edward S. Rotstein's application for a loan originator license be denied;

7 **4.2** Respondent Edward S. Rotstein pay restitution to borrowers who were overcharged for credit reports;

8 **4.3** Respondent Edward S. Rotstein pay a fine. As of the date of this Statement of Charges, the fine totals at  
9 least \$5,000.

10 **4.4** Respondent Edward S. Rotstein be prohibited from participation in the conduct of the affairs of any  
11 mortgage broker subject to licensure by the Director, in any manner, for a period of five (5) years; and

12 **4.5** Respondent Edward S. Rotstein pay an investigation fee. As of the date of this Statement of Charges, the  
13 investigation fee totals at least \$1,000.

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1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intent to Enter an Order to Deny License Application, Impose  
3 Fine, Prohibit from Industry, and Collect Investigation Fee (Statement of Charges) is entered pursuant to the  
4 provisions of RCW 19.146.220, RCW 19.146.221, RCW 19.146.223, and RCW 19.146.230, and is subject to  
5 the provisions of chapter 34.05 RCW (the Administrative Procedure Act). Respondent may make a written  
6 request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY  
7 FOR HEARING accompanying this Statement of Charges.

8  
9 Dated this 28<sup>th</sup> day of December, 2007.

10 [Redacted Signature]

11 DEBORAH BORTNER  
12 Director  
13 Division of Consumer Services  
14 Department of Financial Institutions

15 Presented by:

16 [Redacted Signature]

17 ANTHONY W. CARTER  
18 Enforcement Attorney



19 Approved by:

20 [Redacted Signature]

21 JAMES R. BRUSSELBACK  
22 Enforcement Chief

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**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING:  
Whether there has been a violation of the  
Mortgage Broker Practices Act of Washington by:  
  
EDWARD S. ROTSTEIN,  
Respondent.

C-07-029-07-SC01

NOTICE OF OPPORTUNITY TO DEFEND  
AND OPPORTUNITY FOR HEARING

THE STATE OF WASHINGTON TO:

Edward S. Rotstein

YOU ARE HEREBY NOTIFIED that a STATEMENT OF CHARGES has been filed by the Department of Financial Institutions, a true and correct copy of which is attached and made a part hereof.

YOU ARE HEREBY NOTIFIED that you may file an application for an adjudicative hearing before the Washington State Department of Financial Institutions on the Statement of Charges. Service of this notice is deemed complete upon deposit in the United States mail. YOUR APPLICATION MUST BE RECEIVED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS WITHIN TWENTY (20) DAYS FROM THE DATE YOU RECEIVED THIS NOTICE. If you demand a hearing, you will be notified of the time and place for the hearing at least seven (7) days in advance of the hearing date.

At the hearing, you may appear personally, and by counsel, if you desire. The hearing will be as informal as is practical within the requirements of the Administrative Procedure Act (see chapter 34.05 RCW). The hearing will be recorded. The primary concern will be getting to the truth of the matter insofar as the Statement of Charges is concerned. Technical rules of evidence will not be binding at the hearing except for the rules of privilege recognized by law. You have the right to present evidence and witnesses in your own behalf, and to cross-examine those witnesses presented in support of the Statement of Charges. You may require the attendance of witnesses by subpoena. If you are limited English-speaking or hearing impaired, you have the right to have an interpreter appointed at no cost to you, as discussed below.

1            INTERPRETER AVAILABILITY. If you or a witness for you is a person who, because of non-English-  
2 speaking cultural background, cannot readily speak or understand the English language, or if you or a witness for  
3 you is a person who, because of a hearing impairment or speech defect, cannot readily understand or communicate  
4 in spoken language, including persons who are deaf, deaf and blind, or hard of hearing, AND YOU NEED AN  
5 INTERPRETER, then a qualified interpreter will be appointed at no cost to you or to the witness. You may request  
6 the appointment of a qualified interpreter by indicating your request on the attached Application for Adjudicative  
7 Hearing form.

8            YOU ARE FURTHER NOTIFIED that if the Department of Financial Institutions does not RECEIVE the  
9 Application for Adjudicative Hearing form within twenty (20) days from the date you received this notice, this will  
10 constitute a waiver of your right to a hearing and the Director will find that you do not contest the allegations of the  
11 Statement of Charges. Upon such a finding by the Director a final order will be immediately entered disposing of  
12 this matter as described in the Statement of Charges. If you desire a hearing in this matter, please return the  
13 attached Application for Adjudicative Hearing to:

14            Department of Financial Institutions  
15            Division of Consumer Services  
16            Attn: Fatima Batie  
17            PO Box 41200  
18            Olympia, Washington 98504-1200



19            Dated this 28<sup>th</sup> day of December, 2007.

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22            \_\_\_\_\_  
23            DEBORAH BORTNER  
24            Director  
25            Division of Consumer Services  
                Department of Financial Institutions