

Terms Completed

ORDER SUMMARY – Case Number: C-07-128

Name(s): Zachary J. Namie

Order Number: C-07-128-08-FO01

Effective Date: March 17, 2009

License Number: DFI: 40055

Or NMLS Identifier [U/L] (Revoked, suspended, stayed, application denied or withdrawn)
If applicable, you must specifically note the ending dates of terms.

License Effect: Denied

Not Apply Until: October 18, 2010

Not Eligible Until: _____

Prohibition/Ban Until: _____

Investigation Costs	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Fine	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Judgment	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Satisfaction of Judgment Filed?		<input type="checkbox"/> Y <input type="checkbox"/> N		
	No. of Victims:			

Comments: _____



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF INVESTIGATING
the Loan Originator License Application under the
Mortgage Broker Practices Act of Washington by:

ZACHARY J. NAMIE,

Respondent.

OAH NO. 2007-DFI-0022

NO. C-07-128-08-FO01

FINAL DECISION & ORDER

THIS MATTER has come before the Director ("hereinafter, "Director") of the Department of Financial Institutions (hereinafter, "Department") in the above-enumerated administrative action pursuant to Initial Decision and Order on Motion for Summary Judgment (hereinafter, "Initial Order") based upon a Statement of Charges and Notice of Intention to Enter an Order to Deny License Application (hereinafter, "Statement of Charges") issued by the Division of Consumer Services (hereinafter, "Division") on or about May 16, 2007, under the authority of the Mortgage Broker Practices Act, Ch. 19.146 RCW (hereinafter, "MBPA").

The Respondent, ZACHARY J. NAMIE (hereinafter, "Respondent") timely requested an Administrative Hearing to contest the Statement of Charges, and this matter was assigned to the Office of Administrative Hearings (hereinafter, "OAH"), which designated Administrative Law Judge Rynold C. Fleck (hereinafter, "Administrative Law Judge") to hear the case. The Division made a Motion for Summary Judgment (hereinafter, "Summary Judgment Motion"), by and through its counsel, Assistant Attorney General, Charles Clark (hereinafter, "Division Counsel"). Despite proper notice to Respondent as recited in the Initial Order and evidenced in the Record on Review (hereinafter, "Record"), Respondent did not file a response to the Summary Judgment Motion. Then, on May 1, 2008, the Administrative Law Judge issued an Initial Order granting the summary judgment in favor of the Division. The Initial Order contained Findings of Fact (hereinafter, "FOF") and Conclusions of Law (hereinafter, "COL").

1 More than twenty (20) days has elapsed since the entry and service of the Initial Order.
2 Respondent has not filed any petition for review of the Initial Order.

3 The Division subsequently presented this matter to the Director for entry of a final decision
4 and order prepared by the Division. However, this proposed final decision and order prepared by the
5 Division was in the nature of a *default or uncontested* final order – i.e., in a form and style that is
6 properly reserved for those cases which are either (1) uncontested from inception or (2) come before
7 the Director as a result of an applicant’s default.

8 This case *was* contested by Respondent in the sense that Respondent timely requested an
9 administrative hearing and, therefore, did *not* default. Respondent simply did not file a petition for
10 review of the Initial Order. Division’s proposed final decision and order are inappropriate in form
11 and substance, because they do not convey to the parties or to a superior court (in the event of
12 judicial review) the Director’s required deliberation, even in circumstances such as these, of the
13 sufficiency and propriety of the Administrative Law Judge’s grant of summary judgment.

14 Accordingly, the Director subsequently received and has now considered the entire Record.
15 This Final Decision and Order are based upon a consideration of the entire Record, including,
16 without limitation, the following:

- 17 1. License application dated January 7, 2007 (hereinafter, “Application”);
- 18 2. Statement of Charges;
- 19 3. Notice of Intent to Withdraw, dated February 7, 2008, by A. Stephan Anderson, Esq.,
20 former attorney for Respondent.
- 21 4. Application for Adjudicative Hearing;
- 22 5. Summary Judgment Motion of Division Counsel, including Memorandum in Support of
23 Department’s Motion for Summary Judgment and Declaration of William J Halstead with
24 Exhibits; and
- 25 6. The Initial Order.

26 1.0 Summary of the Case

27 This case concerns whether Respondent is automatically disqualified from obtaining a Loan
28 Originator License (hereinafter, “License”) by reason of having been convicted on October 17, 2003,
29 of unlawful possession of marijuana with intent to deliver (a felony pursuant to RCW 69.50.401) in
30 King County Cause No. 03-1-06500-1. A prospective licensee is automatically disqualified from

1 obtaining a License if convicted of any type of felony or a gross misdemeanor involving dishonesty or
2 financial misconduct within 7 years of the date of application for a loan originator license.¹

3 **2.0 Preliminary Considerations**

4 **2.1 Standards for Summary Judgment in Administrative Actions.** The Director takes note
5 preliminarily of the following standards which are to be applied to motions for summary judgment in
6 an administrative action under the Administrative Procedures Act, Chapter 34.05 RCW (hereinafter,
7 “APA”). The Department has adopted the Model Rules of Procedure, Chapter 10-08 WAC, except to
8 the extent of any conflict with the Department’s Rules of Procedure.² WAC 10-08-135 sets forth the
9 standards to be followed by the Department and the Administrative Law Judge, as its agent, when
10 considering the Summary Judgment Motion and the Summary Judgment Response, and declares that
11 “[a] motion for summary judgment may be granted and an order issued [only] if the written record
12 shows that there is no genuine issue as to any material fact and that the moving party is entitled to
13 judgment as a matter of law.” In evaluating the application of this standard, the Director may rely on
14 applicable law from sources other than WAC 10-08-135 itself and must be respectful of the
15 constitutional rights of respondents.³ To that end, the Director is required to weigh on review all
16 pleadings, evidence and argument in a light most favorable to the non-moving party.⁴ If there is any
17 inference of a triable issue of fact, then summary judgment is inappropriate.⁵ Litigants are entitled to
18 a dispositive hearing on all issues of fact and law.⁶ These principles apply equally to the
19 Administrative Law Judge and to the Director evaluating the Initial Order.⁷

20 **2.2 Proper Consideration by Director absent Petition for Review.** Respondent did not file
21 a petition for review contesting the Initial Order. However, even when a party has *not* filed a petition

22 ¹ RCW 19.146.310(1) (d and (2) and WAC 208-660-350(2)(c).

23 ² WAC 208-08-020(1) declares: “The department adopts the model rules of procedure as set forth in WAC 10-08-035 through 10-08-230. If there is a
24 conflict between the model rules and this chapter, the rules in this chapter shall govern. Wherever the term ‘agency’ appears in the model rules it means
25 the department of financial institutions.”

³ WAC 10-08-220 declares: “Nothing in chapter 10-08 WAC is intended to diminish the constitutional rights of any person or to limit or modify
additional requirements imposed by statute, including the Administrative Procedure Act.”

⁴ *Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333 (1998).

⁵ *Davis v. W. One Auto. Group*, 140 Wn. App. 449, 456 (2007).

⁶ *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300-01, 45 P.3d 1068 (2002), citing *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000).

⁷ *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

1 for review, the Director still has the authority and duty, prior to entering a Final Decision and Order,
2 to consider whether any part of the Initial Order is *not* supported by the Record¹ and whether
3 confirmation of the Initial Order, without modification, would be an error of law. Indeed, with
4 regard to the COL as contained in the Initial Order, the Director is obliged, in the manner of a
5 reviewing court, to consider the statutes and implementing regulations of the Division under the error
6 of law standard, which permits the Director to substitute his judgment for that of the Statement of
Charges and the Administrative Law Judge's Initial Order.²

7 2.3 Director's Consideration of FOF and COL. After due consideration of the entire
8 Record and in a light most favorable to Respondent, the Director is of the decided view that the Initial
9 Order is appropriate in its entirety.

10 3.0 Findings of Fact. Now, therefore, the Director re-affirms FOF 1 through FOF 5, inclusive,
at pages 1-2 of the Initial Order.

11 4.0 Conclusions of Law. Now, therefore, the Director re-affirms: COL 1 through COL 7,
12 inclusive, at pages 2-4 of the Initial Order.

13 5.0 Final Order. Having made Findings of Fact and Conclusions of Law as set forth above, IT IS
HEREBY ORDERED AS FOLLOWS:

14 5.1 Denial of License. The application of Respondent, ZACHARY J. NAMIE, for a Loan
15 Originator License is DENIED.

16 5.2 Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to file a
17 Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition
18 must be filed in the Office of the Director of the Department of Financial Institutions by courier at
19 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia,
20 Washington 98504-1200, within ten (10) days of service of this Final Order upon Respondent. The
21 Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for
22 Reconsideration a prerequisite for seeking judicial review in this matter. A timely Petition for
Reconsideration is deemed denied if, within twenty (20) days from the date the petition is filed, the

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25 ¹ See RCW 34.05.464(4); see also *Northwest Steelhead v. Washington State Department of Fisheries*, 78 Wn. App. 778, 896 P.2d 1292 (1995); see also *Towle v. Department of Fish and Wildlife*, 94 Wn.App. 196, 971 P.2d 591 (1999).

² See *Aponte v. Dep't of Soc. & Health Servs.*, 92 Wn. App. 604, 616-17, 965 P.2d 626 (1998), *review denied*, 137 Wn.2d 1028 (1999); cited in *Nationscapital* at p. 737.

1 agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the
2 date by which it will act on a petition.

3 5.3 Stay of Order. The Director has determined not to consider a Petition to stay
4 the effectiveness of this order. Any such requests should be made in connection with a Petition for
5 Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

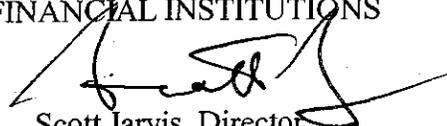
6 5.4 Judicial Review. Respondent has the right to petition the superior court for judicial
7 review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing
8 a Petition for Judicial Review, see RCW 34.05.510 and sections following.

9 5.5 Service. For purposes of filing a Petition for Reconsideration or a Petition for
10 Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service
11 attached hereto.

12 5.6 Effectiveness and Enforcement of Final Order. Pursuant to the Administrative
13 Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective immediately
14 upon deposit in the United States Mail.

15 Dated at Tumwater, Washington, on this 17th day of March, 2009.

16 WASHINGTON STATE DEPARTMENT
17 OF FINANCIAL INSTITUTIONS

18 By: 
19 Scott Jarvis, Director

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NOTICE TO THE PARTIES

In accordance with RCW 34.05.470 and WAC 10-08-215, any Petition for Reconsideration of the FINAL DECISION & ORDER CONFIRMING must be filed with the Director within ten (10) days of service of such FINAL DECISION & ORDER. It should be noted that Petitions for Reconsideration do not stay the effectiveness of the FINAL DECISION & ORDER. Judicial Review of the FINAL DECISION & ORDER is available to a party according to provisions set out in the Washington Administrative Procedure Act, RCW 34.05.570.

This is to certify that the FINAL DECISION AND ORDER has been served upon the following parties on March 17, 2009, by depositing a copy of same in the United States mail, postage prepaid.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By: 
Susan Putzier
Executive Assistant to the Director

Mailed to the following:

Zachary Joseph Namie
317 34th Avenue East
Seattle, Washington 98112

Charles Clark, AAG
Office of the Attorney General
PO Box 40100
Olympia WA 98504-0100

James R. Brusselback
Chief of Enforcement
Division of Consumer Services
Department of Financial Institutions
P.O. Box 41200
Olympia, WA 98504-1200

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

IN THE MATTER OF INVESTIGATING
the Loan Originator License Application under the
Mortgage Broker Practices Act of Washington by:

ZACHARY J. NAMIE,

Respondent.

NO. C-07-128-07-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO DENY LICENSE APPLICATION

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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)¹. After having conducted an investigation pursuant to 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 Zachary J. Namie (Respondent Namie) submitted an application to the Department of Financial Institutions of the State of Washington (Department) for a loan originator license under America West Financial, LLC, a mortgage broker licensed under the Act. The on-line application was received by the Department on or about January 8, 2007.

1.2 Prior Criminal Acts. On October 17, 2003 the Respondent was convicted of Unlawful Possession of Marijuana with the Intent to Deliver pursuant to RCW 69.50.401, a class C felony in Superior Court of Washington for King County (Cause No. 03-1-6500-1).

¹ RCW 19.146 (Amended 2006; Effective January 1, 2007)

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II. GROUNDS FOR ENTRY OF ORDER

2.1 Requirement of No Prior Convictions. Based on the Factual Allegations set forth in Section I above, Respondent Namie fails to meet the requirements of RCW 19.146.310(1)(d) and WAC 208-660-350(2)(c) by having been convicted a felony within seven years of the filing of the present application.

III. AUTHORITY TO IMPOSE SANCTIONS

3.1 Authority to Deny Application for Loan Originator License. Pursuant to RCW 19.146.220(1), the Director may deny licenses to loan originators. Pursuant to RCW 19.146.310(2) and WAC 208-660-350(7), the Director shall not issue a loan originator license if the conditions of RCW 19.146.310(1) have not been met by the applicant, and shall notify the loan originator applicant and any mortgage brokers listed on the application of the denial.

IV. NOTICE OF INTENTION TO ENTER ORDER

Respondent’s violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis for the entry of an Order under RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.310. Therefore, it is the Director’s intention to ORDER that:

4.1 Respondent Zachary J. Namie’s application for a loan originator license be denied.

V. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Deny License Application (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondent may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

1 Dated this 16th day of May, 2007.

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4 DEBORAH BORTNER
5 Director
6 Division of Consumer Services
7 Department of Financial Institutions

8 Presented by:

9 

10 WILLIAM J. HALSTEAD
11 Financial Legal Examiner



12 Approved by:

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14 FATIMA BATIE
15 Financial Legal Examiner Supervisor

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

IN THE MATTER OF INVESTIGATING
the Loan Originator License Application under the
Mortgage Broker Practices Act of Washington by:

C-07-128-07-SC01

ZACHARY J. NAMIE,
Respondent.

NOTICE OF OPPORTUNITY TO DEFEND
AND OPPORTUNITY FOR HEARING

THE STATE OF WASHINGTON TO: Zachary J. Namie

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.

INTERPRETER AVAILABILITY. If you or a witness for you is a person who, because of non-English-speaking cultural background, cannot readily speak or understand the English language, or if you or a witness for

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

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

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

17 Dated this 16th day of May 2007.



18 *Deborah Bortner*

19 DEBORAH BORTNER
20 Director
21 Division of Consumer Services
22 Department of Financial Institutions