



STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

NO. C-07-382-09-FO01

ACT LENDING CORPORATION d/b/a ACT
MORTGAGE CAPITAL, and
NELSON S. HAWS, President, CEO and Owner,

FINAL ORDER

Respondents.

I. DIRECTOR'S CONSIDERATION

A. Procedural History. This matter has come before the Director of the Department of Financial Institutions of the State of Washington (Director) pursuant to RCW 34.05.464. On May 29, 2009, the Director, through Consumer Services Division Director Deborah Bortner, entered a Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Prohibit From Industry, Collect Annual Assessments, Impose Fine, and Collect Investigation Fee (Statement of Charges). A copy of the Statement of Charges is attached and incorporated into this order by this reference. The Statement of Charges was accompanied by a cover letter dated June 3, 2009, a Notice of Opportunity to Defend and Opportunity for Hearing, and blank Applications for Adjudicative Hearing for ACT Lending Corporation d/b/a ACT Mortgage Capital and Nelson S. Haws. The Department served the Statement of Charges, cover letter dated June 3, 2009, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Applications for

1 Adjudicative Hearing for ACT Lending Corporation d/b/a ACT Mortgage Capital and Nelson S. Haws
2 on Respondents on June 3, 2009, by First-Class mail and Federal Express overnight delivery.

3 On June 12, 2009, Respondents each filed an Application for Adjudicative Hearing. On
4 January 11, 2010, the Department made a request to the Office of Administrative Hearings (OAH) to
5 assign an Administrative Law Judge (ALJ) to schedule and conduct a hearing on the Statement of
6 Charges. On January 29, 2010, ALJ Terry A. Schuh (ALJ Schuh) issued a Notice of Prehearing
7 Conference by Telephone scheduling a prehearing conference on Thursday, March 4, 2010, at 1:20
8 p.m. On March 5, 2010, ALJ Schuh issued a Notice of Second Prehearing Conference by Telephone,
9 rescheduling the prehearing conference on Tuesday, May 4, 2010, at 9:20 a.m. on April 28, 2010, ALJ
10 Schuh issued a Notice of Prehearing Conference by Telephone scheduling a prehearing conference for
11 Wednesday, May 19, 2010, at 9:20 a.m. That Order contained the following instruction to the parties:
12 If you fail to appear or participate in the prehearing conference, hearing, or any other scheduled stage
13 of these proceedings, you may lose your right to a hearing as described in RCW 34.05.440.

14
15 On May 19, 2010, the telephonic prehearing conference was held. Respondents did not appear.
16 On May 29, 2010, ALJ Schuh issued an Initial Order of Default dismissing Respondents appeal.

17 Pursuant to RCW 34.05.464 and WAC 10-08-211, Respondents had twenty (20) days from the
18 date of service of the Initial Order of Default to file a Petition for Review of the Initial Order of
19 Default. Respondents did not file a Petition for Review during the statutory period.

20
21 B. Record Presented. The record presented to the Director for his review and for entry of
22 a final decision included the following:

- 23
24 1. Statement of Charges, cover letter dated June 3, 2009, and Notice of Opportunity to
25 Defend and Opportunity for Hearing, with documentation of service;

- 1 2. Applications for Adjudicative Hearing for ACT Lending Corporation d/b/a ACT
2 Mortgage Capital and Nelson S. Haws;
- 3 3. Request to OAH for Assignment of Administrative Law Judge;
- 4 4. Notice of Prehearing Conference by Telephone dated January 29, 2010, with
5 documentation of service;
- 6 5. Notice of Second Prehearing Conference by Telephone dated March 5, 2010, with
7 documentation of service;
- 8 6. Notice of Prehearing Conference by Telephone dated April 28, 2010, with
9 documentation of service; and
7. Initial Order of Default dated May 29, 2010, with documentation of service.

10 C. Factual Findings and Grounds For Order. Pursuant to RCW 34.05.461, the Director
11 hereby adopts the Initial Order of Default, which is attached hereto.

12 II. FINAL ORDER

13 Based upon the foregoing, and the Director having considered the record and being
14 otherwise fully advised, NOW, THEREFORE:

15 A. IT IS HEREBY ORDERED, That:

- 16 1. Respondent ACT Lending Corporation d/b/a ACT Mortgage Capital's license to
17 conduct the business of a consumer loan company is revoked;
- 18 2. Respondent ACT Lending Corporation d/b/a ACT Mortgage Capital is prohibited
19 from participation in the conduct of the affairs of any consumer loan company subject
20 to licensure by the Director, in any manner, for a period of five (5) years;
- 21 3. Respondent Nelson S. Haws is prohibited from participation in the conduct of the
22 affairs of any consumer loan company subject to licensure by the Director, in any
23 manner, for a period of five (5) years;
- 24 4. Respondents ACT Lending Corporation d/b/a ACT Mortgage Capital and Nelson S.
Haws provide to the Director a completed Consolidated Annual Report and Annual
Assessment Report, including all required supporting documentation, for the years
ended December 31, 2006, and December 31, 2007;

- 1 5. Respondents ACT Lending Corporation d/b/a ACT Mortgage Capital and Nelson S.
2 Haws jointly and severally pay the delinquent Annual Assessments due for the years
3 ended December 31, 2006, and December 31, 2007, as calculated in accordance with
4 the instructions for the Annual Assessment Worksheets for the same years, less any
5 amounts previously paid by Respondent ACT Lending Corporation d/b/a Act
6 Mortgage Capital's bonding company;
- 7 6. Respondents ACT Lending Corporation d/b/a ACT Mortgage Capital and Nelson S.
8 Haws jointly and severally pay a fine of \$12,000;
- 9 7. Respondents ACT Lending Corporation d/b/a ACT Mortgage Capital and Nelson S.
10 Haws jointly and severally pay an investigation fee of \$1,939.18 calculated at \$69.01
11 per hour for the twenty eight and one tenth (28.1) staff hours devoted to the
12 investigation; and
- 13 8. Respondents maintain records in compliance with the Act and provide the Department
14 with the location of the books, records and other information relating to Respondent
15 ACT Lending Corporation d/b/a ACT Mortgage Capital's consumer loan company
16 business, and the name, address and telephone number of the individual responsible
17 for maintenance of such records in compliance with the Act.

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

25 A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date
the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written
notice specifying the date by which it will act on a petition.

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

4 D. Judicial Review. Respondents have the right to petition the superior court for
5 judicial review of this agency action under the provisions of chapter 34.05 RCW. For the requirements
6 for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

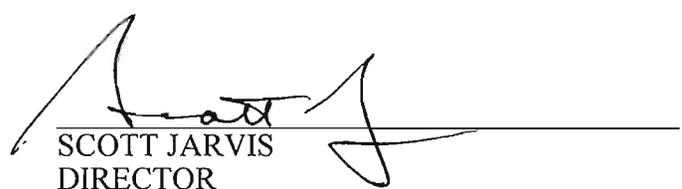
7 E. Non-compliance with Order. If you do not comply with the terms of this order, the
8 Department may seek its enforcement by the Office of Attorney General to include the collection of the
9 fines, fees, and assessments imposed herein.

10 F. Service. For purposes of filing a Petition for Reconsideration or a Petition for
11 Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service
12 attached hereto.
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14 DATED this 21st day of September, 2010.



16 STATE OF WASHINGTON
17 DEPARTMENT OF FINANCIAL INSTITUTIONS

18 
19 SCOTT JARVIS
20 DIRECTOR

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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
Consumer Loan Act of Washington by:

NO. C-07-382-09-SC01

ACT LENDING CORPORATION d/b/a ACT
MORTGAGE CAPITAL, and
NELSON S. HAWS, President, CEO and Owner,

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO REVOKE LICENSE, PROHIBIT
FROM INDUSTRY, COLLECT ANNUAL
ASSESSMENTS, IMPOSE FINE, AND COLLECT
INVESTIGATION FEE

Respondents.

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INTRODUCTION

Pursuant to RCW 31.04.093, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act)¹. After having conducted an investigation pursuant to RCW 31.04.145, 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 Respondents.

A. **ACT Lending Corporation d/b/a ACT Mortgage Capital (ACT Lending)** was licensed by the Department of Financial Institutions of the State of Washington (Department) to engage in the business of making secured or unsecured loans of money, credit, or things in action at interest rates authorized by the Act on December 29, 2005, and continues to be licensed to date. Respondent ACT Lending is licensed to conduct the business of a Consumer Loan Company at one location: 481 Sawgrass Corporate Parkway, Sunrise, Florida, 33325.

B. **Nelson S. Haws** is President, CEO and Owner of Respondent ACT Lending.

¹ RCW 31.04 (2002)

1 **1.2 Failure to Pay Annual Assessments.** An annual assessment fee for each license is due to the
2 Department no later than the 1st day of March of the following year. To date, the Department has not received
3 an annual assessment due from Respondents, totaling \$1,500. Payment of the annual assessment of \$1,500.00
4 for the year ended December 31, 2006 was due to the Department no later than March 1, 2007.

5 **1.3 Failure to Maintain Bond.** On April 23, 2007, the Department received notice from the Hartford Fire
6 Insurance Company that Respondent ACT Lending's surety bond would be cancelled, effective June 13, 2007.
7 To date, Respondents have failed to notify the Department of the cancellation of the surety bond and have failed
8 to provide the required surety bond or an approved alternative.

9 **1.4 Failure to Respond to Directive.** On April 2, 2007, the Department served a directive on Respondents
10 by certified mail. In addition, on June 19, 2007, the Department sent a directive to Respondent ACT Lending's
11 last known address via First-Class mail. This directive was not returned. These directives variously required
12 that Respondents provide the Department with their Annual Assessment worksheet, pay the Annual Assessment
13 fee, and provide a valid surety bond or acceptable alternative. To date, the Department has not received a
14 response to these directives.

15 **1.5 Failure to Notify Department of Significant Developments.**

16 A. As stated in paragraph 1.3, to date, Respondents have not notified the Department of the
17 cancellation of Respondent ACT Lending's surety bond.

18 B. Mail from the Department addressed to Respondent ACT Lending's licensed location has been
19 returned by the United States Postal Service marked "Return to sender. Not deliverable as addressed. Unable
20 to forward." To date, Respondents have not notified the Department of a change in location of Respondent
21 ACT Lending's principal place of business or mailing address.

22 C. Respondent ACT Lending's corporate license, maintained with the State of Washington
23 Secretary of State, expired on September 30, 2007. To date, Respondents have not notified the Department of
24 this change in standing with the State of Washington Secretary of State.
25

1 **1.6 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by
2 Respondents continues to date.

3 **II. GROUNDS FOR ENTRY OF ORDER**

4 **2.1 Requirement to Pay Annual Assessment.** Based on the Factual Allegations set forth in Section I
5 above, Respondents are in apparent violation of RCW 31.04.085, WAC 208-620-430(1) and WAC 208-620-440
6 for failing to pay to the Director an annual assessment fee no later than March 1st of the following year.

7 **2.2 Requirement to Maintain Surety Bond.** Based on the Factual Allegations set forth in Section I
8 above, Respondents are in apparent violation of RCW 31.04.045(3) and WAC 208-620-320 for failing to file
9 and maintain a surety bond or approved alternative with the Department.

10 **2.3 Requirement to Respond to Directive.** Based on the Factual Allegations set forth in Section I above,
11 Respondents are in apparent violation of RCW 31.04.145 for failure to comply with a directive issued by the
12 Department.

13 **2.4 Requirement to Notify Department of Significant Developments.** Based on the Factual Allegations
14 set forth in Section I above, Respondents are in apparent violation of WAC 208-620-490(1) for failure to notify
15 the director in writing ten days prior to a change of the licensee's principal place of business or any of its branch
16 offices, name or legal status, name and mailing address of the out-of-state licensee's registered agent, legal or
17 trade name, or change of ownership control of ten percent or more.

18 **2.5 Requirement to Notify Department of Significant Developments.** Based on the factual allegations
19 set forth in Section I above, Respondents are in apparent violation of WAC 208-620-490(2) for failure to notify
20 the director in writing within ten days after an occurrence of a change in mailing address, telephone number, fax
21 number, or e-mail address; cancellation or expiration of its Washington state master business license; change in
22 its standing with the state of Washington secretary of state, including the resignation or change of the registered
23 agent; failure to maintain the appropriate unimpaired capital under WAC 208-620-340 or receipt of notification
24 of cancellation of the licensee's surety bond.

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1 **2.6 Requirement to Maintain Accurate and Current Books and Records.** Based on the Factual
2 Allegations set forth in Section I above, Respondents are in apparent violation of RCW 31.04.155 and WAC
3 208-620-520 for failing to make accurate and current books and records readily available to the Department
4 until at least twenty-five months after making the final entry on any loan.

5 **III. AUTHORITY TO IMPOSE SANCTIONS**

6 **3.1 Authority to Revoke License.** Pursuant to RCW 31.04.093(3), the Director may revoke a license if a
7 licensee fails to pay any fee due the state of Washington, or fails to comply with any specific order or demand
8 of the Director lawfully made and directed to the licensee in accordance with the Act, or violates any provision
9 of the Act or any rule adopted under the Act either knowingly or without exercise of due care.

10 **3.2 Authority to Prohibit from the Industry.** Pursuant to RCW 31.04.093(6), the Director may issue
11 orders removing from office or prohibiting from participation in the conduct of the affairs of any licensee, or
12 both, any officer, principal, employee, or loan originator or any person subject to the Act for failure to comply
13 with any order or subpoena issued under this chapter.

14 **3.3 Authority to Collect Annual Assessments and Late Fees.** Pursuant to RCW 31.04.085 and WAC 208
15 620-220(1) each licensee must pay to the Director an annual assessment as determined in rule by the Director by
16 March 1st of the following year. Pursuant to WAC 208-620-220(2) a licensee that fails to submit the required
17 annual report by the March 1st due date is subject to a penalty of fifty dollars for each day of delay.

18 **3.4 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of up to one
19 hundred dollars per day on a licensee, its employee or loan originator, or other person subject to the Act for any
20 violations of the Act, or failure to comply with any order or subpoena issued by the director under this chapter.

21 **3.5 Authority to Collect Investigation Fee.** Pursuant to RCW 31.04.145(3) and WAC 208-620-590(1), upon
22 completion of any investigation of the books and records of a licensee or other person subject to the Act, the
23 Department will furnish to the licensee or other person subject to the Act a billing to cover the cost of the
24 investigation. The investigation charge will be calculated at the rate of sixty nine dollars and one cent (\$69.01) per
25 hour that each staff person devoted to the investigation.

1 **3.6 Authority to Issue Orders Directing Action:** Pursuant to RCW 31.04.093(5)(b), the Director may
2 issue an order directing a licensee to take such affirmative action as is necessary to comply with the Act.

3 **IV. NOTICE OF INTENTION TO ENTER ORDER**

4 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as set forth in
5 the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis
6 for the entry of an Order under RCW 31.04.093. Therefore, it is the Director's intention to ORDER that:

7 **4.1** Respondent ACT Lending Corporation d/b/a ACT Mortgage Capital's license to conduct the business of a
8 consumer loan company be revoked;

9 **4.2** Respondent ACT Lending Corporation d/b/a ACT Mortgage Capital be prohibited from participation in the
10 conduct of the affairs of any consumer loan company subject to licensure by the Director, in any manner,
11 for a period of five (5) years;

12 **4.3** Respondent Nelson S. Haws be prohibited from participation in the conduct of the affairs of any consumer
13 loan company subject to licensure by the Director, in any manner, for a period of five (5) years;

14 **4.4** Respondents ACT Lending Corporation d/b/a ACT Mortgage Capital and Nelson S. Haws provide to
15 the Director a completed Consolidated Annual Report and Annual Assessment Report, including all
16 required supporting documentation, for the years ended December 31, 2006, and December 31, 2007;

17 **4.5** Respondents ACT Lending Corporation d/b/a ACT Mortgage Capital and Nelson S. Haws jointly and
18 severally pay the delinquent Annual Assessments due for the years ended December 31, 2006, and
19 December 31, 2007, as calculated in accordance with the instructions for the Annual Assessment
20 Worksheets for the same years, less any amounts previously paid by Respondent ACT Lending
21 Corporation d/b/a ACT Mortgage Capital's bonding company;

22 **4.6** Respondents ACT Lending Corporation d/b/a ACT Mortgage Capital and Nelson S. Haws jointly and
23 severally pay a fine which as of the date of this Statement of Charges is \$12,000;

24 **4.7** Respondents ACT Lending Corporation d/b/a ACT Mortgage Capital and Nelson S. Haws jointly and
25 severally pay an investigation fee which as of the date of this Statement of Charges is \$1,939.18 calculated
at \$69.01 per hour for the twenty eight and one tenth (28.1) staff hours devoted to the investigation; and

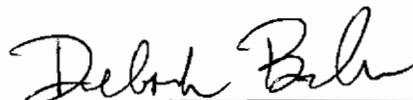
4.8 Respondents maintain records in compliance with the Act and provide the Department with the location of
the books, records and other information relating to Respondent ACT Lending Corporation d/b/a ACT
Mortgage Capital's Consumer Loan Company business, and the name, address and telephone number of
the individual responsible for maintenance of such records in compliance with the Act.

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V. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Collect Annual Assessments, Impose Fine, Prohibit From Industry, and Collect Investigation Fee (Statement of Charges) is entered pursuant to the provisions of RCW 31.04.093, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents 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.

Dated this 29th day of May, 2009.



DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:



ROBERT E. JONES
Financial Legal Examiner

Approved by:



JAMES R. BRUSSELBACK
Enforcement Chief

