

Terms Completed

ORDER SUMMARY – Case Number: C-07-496

Name(s): Daniel Dwight Dyer

Order Number: C-07-496-07-FO01

Effective Date: December 17, 2008

License Number: DFI: 36198 [NMLS: 68583]

Or NMLS Identifier [U/L] (Revoked, suspended, stayed, application denied or withdrawn)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: Denial

Not Apply Until: n/a

Not Eligible Until: _____

Prohibition/Ban Until: n/a

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

1
2
3
4
5
6
7
8 IN THE MATTER OF INVESTIGATING
9 The Loan Originator License Application
10 under the Mortgage Broker Practices Act of
11 Washington by:

12 DANIEL DWIGHT DYER,

13 Respondent.

OAH Docket No. 2008-DFI-0010

No. C-07-496-07-FO01

14 FINAL DECISION & ORDER
15 CONFIRMING GRANT OF
16 DEPARTMENT'S MOTION FOR
17 SUMMARY JUDGMENT AND DENYING
18 RESPONDENT'S CROSS-MOTION FOR
19 SUMMARY JUDGMENT

20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
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 Order Granting Department's Motion for Summary Judgment and Denying Respondent's Cross-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 and Prohibit from Industry (hereinafter, "Statement of Charges") issued by the Division of Consumer Services (hereinafter, "Division") on or about December 5, 2007, under the authority of the Mortgage Broker Practices Act, Ch. 19.146 RCW (hereinafter, "MBPA").

The Respondent, DANIEL DWIGHT DYER (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 Mary Ellen Goodwin (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"). Respondent, by and through his attorney of record, G. Perrin

RE: Daniel Dwight Dyer, OAH Docket No. 2008-DFI-0010, DFI No. C-07-496-07-FO01

FINAL DECISION & ORDER CONFIRMING GRANT OF DEPARTMENT'S MOTION FOR SUMMARY JUDGMENT AND DENYING RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT - 1

1 Walker (hereinafter, "Respondent's Counsel"), filed a Response (hereinafter, respectively,
2 "Cross-Motion" and "Opposition"). Division Counsel responded with the Department's
3 Response to Respondent's Cross-Motion for Summary Judgment (hereinafter, "Response to
4 Cross-Motion"). Respondent then further responded to the Division with Respondent Dyer's
5 Reply to the Department's Response to Dyer's Cross-Motion for Summary Judgment
6 (hereinafter, "Respondent's Reply"). Then, after consideration of the Summary Judgment
7 Motion, Cross-Motion and Opposition, Response to Cross-Motion and Respondent's Reply, on
8 June 23, 2008, the Administrative Law Judge issued an Initial Order containing findings of fact
9 and conclusions of law.
10

11 More than twenty (20) days has elapsed since the entry and service of the Initial Order.
12 Neither party has filed any petition for review of the Initial Order.

13 On or about July 18, 2008, the Division presented this matter to the Director for entry of
14 a final decision and order. However, the proposed final decision and order were in a form and
15 style that is properly reserved for those cases which are either (1) uncontested from inception
16 or (2) come before the Director as a result of an applicant's default.

17 This case *was* contested by Respondent. Respondent *did* respond to the Summary
18 Judgment Motion and, indeed, brought his own Cross-Motion. Respondent *did not* default.
19 Respondent simply did not file a petition for review of the Initial Order. Division's proposed
20 final decision and order are inappropriate in form and substance, because they do not convey to
21 the parties or to a superior court (in the event of judicial review) the Director's required
22 deliberation, even in circumstances such as these, of the sufficiency and propriety of the
23 Administrative Law Judge's grant of summary judgment.
24

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

- 28 1. Online License application dated December 19, 2006 (hereinafter, "Application");
- 29 2. Statement of Charges;
- 30 3. Application for Adjudicative Hearing;
- 31 4. Summary Judgment Motion;
- 32 5. Memorandum in Support of Summary Judgment Motion (hereinafter, "Division's
33 Memorandum");
34

- 1 6. Declaration of Steven C. Sherman in Support of Summary Judgment Motion
- 2 (hereinafter, "Sherman Declaration");
- 3 7. Respondent's Cross-Motion and Opposition;
- 4 8. Declaration of Respondent Dyer in Opposition to the Department's Motion for
- 5 Summary Judgment and in Support of Dyer's Motion for Summary Judgment
- 6 Reversing the Department's Denial of His Loan Originator's License (hereinafter,
- 7 "Respondent's Declaration");
- 8 9. Respondent's Reply; and
- 9 10. Initial Order.

11 1.0 Summary of the Case

12 This case concerns whether it was permissible for the Department to deny Respondent a
13 Loan Originator License (hereinafter, "License") by reason of Respondent having entered into
14 a Consent Order¹ (hereinafter, "Consent Order") with the Department's Division of Securities
15 (hereinafter, "Division of Securities") on May 24, 2004, in which respondent agreed to
16 permanent revocation of his securities salesperson's license and agreed not to make application
17 for nor be granted a broker-dealer, investment advisor, securities salesperson, or investment
18 advisor representative license in Washington State. A prospective licensee is automatically
19 disqualified from obtaining a License if he or she has had a license issued under this chapter or
20 any similar state statute suspended or revoked within five years of the filing of the application
21 in question.²

23 2.0 Preliminary Considerations

24 2.1 Standards for Summary Judgment in Administrative Actions. The Director
25 takes note preliminarily of the following standards which are to be applied to motions for
26 summary judgment in an administrative action under the Administrative Procedures Act,
27 Chapter 34.05 RCW (hereinafter, "APA") :

28 2.1.1 Standards for Granting Summary Judgment. The Department has
29 adopted the Model Rules of Procedure, Chapter 10-08 WAC, except to the extent of any
30

32
33 ¹ Washington State Department of Financial Institutions, Securities Division, No. S-03-009-04001.

34 ² RCW 19.146.310(1) (c) and WAC 208-660-350(2)(b).

1 conflict with the Department's Rules of Procedure.³ WAC 10-08-135 sets forth the standards
2 to be followed by the Department and the Administrative Law Judge, as its agent, when
3 considering the Summary Judgment Motion, Division's Memorandum, Sherman Declaration,
4 Cross-Motion and Opposition, Respondent's Declaration, and Respondent's Reply, and
5 declares that "[a] motion for summary judgment may be granted and an order issued [only] if
6 the written record shows that there is no genuine issue as to any material fact and that the
7 moving party is entitled to judgment as a matter of law." In evaluating the application of this
8 standard, the Director may rely on applicable law from sources other than WAC 10-08-135
9 itself and must be respectful of the constitutional rights of respondents.⁴ To that end, the
10 Director is required to weigh on review all pleadings, evidence and argument in a light most
11 favorable to the non-moving party.⁵ If there is any inference of a triable issue of fact, then
12 summary judgment is inappropriate.⁶ Litigants are entitled to a dispositive hearing on all issues
13 of fact and law.⁷ These principles apply equally to the Administrative Law Judge and to the
14 Director evaluating the Initial Order.⁸

16 2.1.2 Proper Consideration by Director Absent Petition for Review.

17 Respondent did not file a petition for review contesting the Initial Order. However, even when
18 a party has *not* filed a petition for review, the Director still has the authority and duty, prior to
19 entering a Final Decision and Order, to consider whether any part of the Initial Order is *not*
20 supported by the record⁹ and whether confirmation of the Initial Order, without modification,
21 would be an error of law. Indeed, with regard to conclusions of law as contained in the Initial
22

23
24
25 ³ 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 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 the department of financial institutions."

26
27 ⁴ 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."

28 ⁵ *Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333 (1998).

29 ⁶ *Davis v. W. One Auto. Group*, 140 Wn. App. 449, 456 (2007).

30 ⁷ *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
31 (2000).

32 ⁸ *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

33 ⁹ 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);
34 see also *Towle v. Department of Fish and Wildlife*, 94 Wn.App. 196, 971 P.2d 591 (1999).

1 Order, the Director is obliged, in the manner of a reviewing court, to consider the statutes and
2 implementing regulations of the Division under the error of law standard, which permits the
3 Director to substitute his judgment for that of the Division's Statement of Charges and the
4 Administrative Law Judge's Initial Order.¹⁰

5 2.1.3 No Authority to Address Constitutional Questions. Even though the
6 Director must be respectful of the constitutional rights of the Respondent (e.g., due process),¹¹
7 the Director, like the Administrative Law Judge, has no authority to address constitutional
8 questions. The Director concurs with the Administrative Law Judge, as the latter articulated in
9 the Initial Order, that administrative law judges lack authority to invalidate legislation and
10 agency regulations. For the same reason, the Director lacks authority to officially consider the
11 constitutionality of laws enacted by the Legislature with the express requirement that they be
12 administered by the Department. Accordingly, the Director must decline to consider assertions
13 of unconstitutionality raised by Respondent in his Cross-Motion. See *Bare v. Gorton*, 84
14 Wn.2d 380, 383 (1974), citing *United States v. Kissinger*, 250 F.2d 940 (3d Cir. 1958); *cert.*
15 *denied*, 356 U.S. 958 (1958). 3 K. Davis, *Administrative Law Treatise*, § 20.04, at p. 74 (1958);
16 see also *Johnson v. Robison*, 415 U.S. 361, 368 (1974), quoting *Oestereich v. Selective Serv.*
17 *System Local Bd. No. 11*, 393 U.S. 233, 242 (1968); accord, *Califano v. Sanders*, 430 U.S. 99,
18 109 (1977).

19
20
21 3.0 Appropriateness of Summary Judgment. The Director concurs with the Administrative
22 Law Judge that there was no genuine issue of material fact in this case on account of
23 Respondent having entered into a Consent Order with the Division of Securities on May 24,
24 2004, which was within 5 years of the date of his License application. This automatically
25 disqualifies Respondent from obtaining a License as a matter of law, pursuant to RCW
26 19.146.310(1) (c) and WAC 208-660-350(2)(b).

27 4.0 Final Order. The Director, therefore, (1) reaffirms all of the findings of fact and
28 conclusions of law contained in the Initial Order, (2) confirms the grant of summary judgment
29 in favor of the Division and (3) denies Respondent's Cross-Motion for summary judgment.

30 IT IS HEREBY ORDERED AS FOLLOWS:
31

32
33 ¹⁰ 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
34 in *Nationscapital* at p. 737.

¹¹ See *Footnote 4* at p. 4 above.

1 4.1 Denial of License. The application of Respondent, DANIEL DWIGHT DYER,
2 for a Loan Originator License is denied.

3 4.2 Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to
4 file a Petition for Reconsideration stating the specific grounds upon which relief is requested.
5 The Petition must be filed in the Office of the Director of the Department of Financial
6 Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail
7 at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of this
8 Final Order upon Respondent. The Petition for Reconsideration shall not stay the effectiveness
9 of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in
10 this matter. A timely Petition for Reconsideration is deemed denied if, within twenty (20) days
11 from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the
12 parties with a written notice specifying the date by which it will act on a petition.

13 4.3 Stay of Order. The Director has determined not to consider a Petition to
14 Stay the effectiveness of this order. Any such requests should be made in connection with a
15 Petition for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

16 4.4 Judicial Review. Respondent has the right to petition the superior court for
17 judicial review of this agency action under the provisions of chapter 34.05 RCW. For the
18 requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

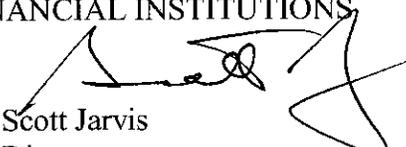
19 4.5 Service. For purposes of filing a Petition for Reconsideration or a Petition
20 for Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of
21 service attached hereto.

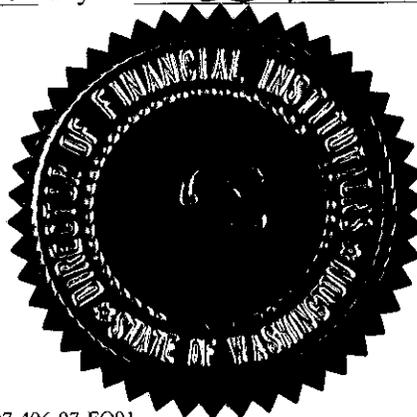
22 4.6 Effectiveness and Enforcement of Final Order. Pursuant to the Administrative
23 Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective
24 immediately upon deposit in the United States Mail.

25 Dated at Tumwater, Washington, on this 17th day of December, 2008.

26
27
28
29 WASHINGTON STATE DEPARTMENT
30 OF FINANCIAL INSTITUTIONS

31 By:

32 
33 Scott Jarvis
34 Director



RE: Daniel Dwight Dyer, OAH Docket No. 2008-DFI-0010, DFI No. C-07-496-07-FO01

FINAL DECISION & ORDER CONFIRMING GRANT OF DEPARTMENT'S MOTION FOR SUMMARY JUDGMENT AND DENYING
RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT - 6

JUN 24 2008

GOVERNMENT COMPLIANCE
& ENFORCEMENT

STATE OF WASHINGTON
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF FINANCIAL INSTITUTIONS

In The Matter Of:

DANIEL DWIGHT DYER,

Respondent

Docket No. 2008-DFI-0010

INITIAL ORDER
GRANTING THE DEPARTMENT'S
MOTION FOR SUMMARY JUDGMENT
AND
DENYING RESPONDENT'S CROSS
MOTION FOR SUMMARY JUDGMENT

JURISDICTION and APPEAL RIGHTS

Pursuant to 34.05 RCW (the Administrative Procedure Act), 34.12 RCW, and WAC 208-660-350, the Statement of Charges issued under RCW 19.146 is appealable to an administrative law judge. The decision of the administrative law judge is an initial order, subject to review by the Department pursuant to RCW 34.05.464 and WAC 10-08-211.

Appeal rights are described at the end of this order.

PROCEDURAL BACKGROUND

This matter is an adjudicative proceeding pursuant to the Administrative Procedure Act to review action the Department of Financial Institutions ("the Department") undertook against Daniel Dwight Dyer, the Respondent.

On December 5, 2007, the Department filed a Statement of Charges and Notice of Intent to Enter an Order to Deny License Application ("the Statement of Charges").

In the Statement of Charges, the Department advised Daniel Dwight Dyer, that he failed to qualify for a mortgage broker license under RCW 19.146.310(1)(c) and WAC 208-660-350(2)(b) by having a license issued under this chapter or any similar state statute suspended or revoked within five years of submitting his application.

The Respondent, Daniel Dwight Dyer, filed a timely application for an administrative hearing and review of the Statement of Charges, which prompted this administrative proceeding before the Office of Administrative Hearings.

After an initial prehearing conference, the Department filed a timely Motion for Summary Judgment pursuant to WAC 10-08-135 requesting entry of an order holding the license denial to be proper.

On May 1, 2008, the Respondent filed a Cross Motion for Summary Judgment and Response in Opposition to the Department's Motion.

On May 12, 2008, the Department filed a Response to Respondent Dyer's Cross Motion.

On May 16, 2008, Respondent Dyer filed a Reply to the Department's Response.

9. On May 19, 2008, at 9:00 a.m. , Administrative Law Judge Mary Ellen Goodwin conducted a telephone hearing on the Department's Motion for Summary Judgment and the Respondent's Cross Motion for Summary Judgment.

10. The summary judgment hearing was tape recorded.

ISSUES

Did the Department properly deny Daniel Dwight Dyer's loan originator license application based his failure to qualify for a loan originator license under RCW 19.146.310(1)(c) and WAC 208-660-350(2)(b) by having a license issued under this chapter or any similar state statute suspended or revoked within five years of submitting his application? Yes

Does an administrative law judge have the authority to address a constitutional challenge to a Department regulation? No

SUMMARY JUDGMENT STANDARD

Summary judgment may be granted if the written record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as matter of law. WAC 10-08-135. The evidence presented, and all reasonable inferences from the facts, must be viewed in the light most favorable to the nonmoving party. *Herron v. King Broadcasting*, 112 Wn.2d 762, 776 P.2d 98 (1989). Where reasonable minds could reach but one conclusion from the admissible facts and evidence, summary judgment should be granted. *White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997).

The initial burden of showing the absence of material fact rests with the moving party. *Young v. Key Pharmaceuticals*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). Only if the moving party meets this initial showing will the inquiry shift to the non-moving party. *Herron v. King Broadcasting*, 112 Wn.2d 762, 776 P.2d 98 (1989). In that case, the non-moving party must " counter with specific factual allegations revealing a genuine issue of fact. . ." *Int. Union of Bricklayers, etc. v. Jaska*, 752 F.2d 1401, 1405 (9th Cir. 1985).

EVIDENCE CONSIDERED

Before ruling on the Department's Motion for Summary Judgment and the Respondent's Cross Motion for Summary Judgment, I considered the following:

1. The Department's Motion for Summary Judgment;
2. The Department's Memorandum in Support of Motion for Summary Judgment;
3. Declaration of Steven C. Sherman in Support of Department's Motion and Exhibits A through C.
4. Respondent Dyer's Cross Motion for Summary Judgment Reversing the Department's Denial of Dyer's Loan Officer Application and Opposition to the Department's Motion for Summary Judgment.
5. Declaration of Respondent Dyer in Opposition to the Department's Motion for Summary Judgment and in Support of Respondent Dyer's Motion for Summary Judgment Reversing the Department's Denial of His Loan Originator's License and Exhibit 1.
6. Department's Response to Respondent's Cross Motion for Summary Judgment ;
7. Declaration of Michael E. Stevenson in Response to Respondent Dyer's Cross Motion for Summary Judgment and Exhibit A.
8. Respondent Dyer's Reply to the Department's Response to Dyer's Cross Motion for Summary Judgment.

UNDISPUTED FACTS AND APPLICABLE LAW

1. On or about December 19, 2006, Daniel Dwight Dyer submitted an online application to the Department for a loan originator's license ("the loan originator application"). Exhibit A, Declaration of Steven C. Sherman. As part of that process, Daniel Dwight Dyer also submitted a completed Uniform Individual Mortgage License/Registration and Consent Form to the Department which was received by the Department on or about January 3, 2007. Exhibit B, Declaration of Steven C. Sherman.
2. On May 25, 2004, Mr. Dyer and the Securities Division of the Department entered into a Consent Order, S-03-009-04001. In the Consent Order, Mr. Dyer agreed to the permanent revocation of his securities salesperson license and agreed not to make application for nor be granted a broker-dealer, investment advisor, securities salesperson, or investment advisor representative license in the state of Washington. Exhibit C, Steven C. Sherman Declaration.

3. The Findings of Fact and Conclusions of Law in the May 25, 2004 Consent Order describe how Mr. Dyer sold unregistered securities in the state of Washington, made untrue statements of material fact, omitted material facts to investors, and conducted securities transactions that were neither recorded on the books and records nor authorized by his employer. Exhibit C, Steven C. Sherman Declaration.
4. On December 5, 2007, the Department issued the Statement of Charges in this matter to deny the Respondent's loan originator license application based on the Respondent's failure to qualify for a loan originator license under RCW 19.146.310(1)(c) and WAC 208-660-350(2)(b) by having a license issued under this chapter or any similar state statute suspended or revoked within five years of submitting his application.
5. The Respondent filed a timely application for an administrative hearing to contest the Statement of Charges.
6. Daniel Dwight Dyer's securities salesperson license was revoked by the Department of Financial Institutions effective December 31, 2003 within 5 years of his submitting his application for a loan originator's license.
7. The Director of the Department of Financial Institutions is responsible for the enforcement, administration and interpretation of Chapter 19.146 RCW, the Mortgage Broker Practices Act ("Act"). The Director must make a finding with respect to whether the loan originator applicant has had a license issued under this chapter or any similar state statute suspended or revoked within five years of submitting his application. RCW 19.146.310(1)(c); WAC 208-660-350(2)(b). Where the Director determines this condition to licensure exists, the loan originator license application "shall" be denied. RCW 19.146.310(1) (c).
8. The Securities Act of Washington is a statute similar to the Mortgage Broker's Practices Act. Both were enacted to protect the public interest. The Findings and declaration of the Mortgage Brokers Practices Act provides: "The legislature finds and declares that the brokering of residential real estate loans substantially affects the public interest. ...It is the intent of the legislature to establish a state system of licensure in addition to rules of practice and conduct or mortgage brokers and loan originators to promote honesty and fair dealing with citizens and to preserve public confidence..." RCW 19.46.05. The Securities Act of Washington authorizes the Director to deny, suspend, revoke, etc. the application or registration of any broker-dealer, salesperson, investment adviser representative, or investment adviser, ...if the director finds that the order is in the public interest and that the applicant or registrant...has engaged in dishonest or unethical practices in the securities or commodities business." RCW 21.20.110(1) (g)
9. The Department denied the Respondent's application pursuant to RCW 19.146.310(1)(c) and WAC 208-660-350(2)(b) because the Director determined that Daniel Dwight Dyer fails to qualify for a license by having a license issued under this chapter or any similar state statute suspended or revoked within five years of submitting his application

10. Summary judgment should be granted to the Department if the Department has proved with summary judgment evidence that Daniel Dwight Dyer fails to qualify for a loan originator license pursuant to the provisions of RCW 19.146.310(1)(c) and WAC 208-660-350(2)(b).

11. In his Cross Motion for Summary Judgment and in Opposition to the Department's Motion, the Respondent, Daniel Dwight Dyer, concedes that there are no issues of material fact to be resolved at hearing.

12. The Respondent, Daniel Dwight Dyer, alleges that the Department's denial of his loan originator license application violates the state and federal constitutional prohibitions against passing ex post facto laws and laws that impair the obligations of contracts.

13. The administrative law judge in an administrative hearing challenging a Department action must first apply Department regulations. WAC 388-02-0220(1). Only if no regulation applies, or if the applicable regulation is ambiguous, may the administrative law judge look beyond the regulation as written and decide the issue according to the best legal authority available. WAC 388-02-0220(2). The power and authority of an administrative agency is limited to that which is expressly granted by statute or necessarily implied therein. *McGuire v. State*, 58 Wn. App. 195, 198, 791 P. 2d 929 (1990).

14. There is no need in this case to "develop the record". The record is clearly set forth in the pleadings and exhibits.

15. Having carefully considered all of the evidence presented and the arguments of counsel, I conclude that there is no genuine issue of material fact as to whether Daniel Dwight Dyer fails to qualify for a loan originator license pursuant to RCW 19.146.310(1)(c) and WAC 208-660-350(2)(b). The Department's denial of Daniel Dwight Dyer's loan originator license was proper.

IT IS HEREBY ORDERED:

1. The Department's denial of Daniel Dwight Dyer's loan originator license is ***AFFIRMED*** and the Department's motion for summary judgment is ***GRANTED***.
2. The Respondent's cross motion for summary judgment is ***DENIED***.

Dated and issued on the 23rd day of June 2008 at Olympia, Washington.

A handwritten signature in black ink that reads "Mary Ellen Goodwin". The signature is written in a cursive, flowing style.

Mary Ellen Goodwin
ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings
2420 Bristol Court SW
PO Box 9046
Olympia, WA 98507-9046

FURTHER APPEAL RIGHTS

Under RCW 34.05.464 and WAC 10-08-211, any party to an adjudicative proceeding may file a *Petition for Review* of this *Initial Decision and Order*. Any *Petition for Review* shall be filed with the Director of the Department of Financial Institutions within twenty (20) days of the date of service of the *Initial Order*. **The deadline to file a *Petition for Review* is July 14, 2007.**

Address for filing the *Petition for Review*:

**Director
Department of Financial Institutions
PO Box 41200
Olympia, WA 98504-1200**

Copies of any such *Petition* must be served upon all other parties or their representatives at the time the *Petition* is filed with the Director.

Petitions for Review shall specify the portions of the *Initial Decision and Order* to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition. Any party may file a reply to a *Petition for Review*. Replies must be filed with the Director within ten (10) days of the date of service of the *Petition* and copies of the reply must be served upon all other parties or their representatives at the time the reply is filed with the Director.

After the time for filing a *Petition for Review* has elapsed, the Director of the Department of Financial Institutions will issue a *Final Decision and Order* in this matter. In accordance with RCW 34.05.470 and WAC 10-08-215, any *Petition for Reconsideration* of such *Final Decision and Order* must be filed with the Director within ten (10) days of service of the *Final Decision and Order*. It should be noted that *Petitions for Reconsideration* do not stay the effectiveness of the *Final Decision and Order*.

Judicial Review of the *Final Decision and Order* is available to a party according to the provisions set out in the Administrative Procedure Act, RCW 34.05.570.

1
2
3
4
5
6
7
8
9

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

10
11
12
13
14

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

15
16
17
18
19
20
21
22
23
24
25

DANIEL DWIGHT DYER,

Respondent.

NO. C-07-496-07-SC01

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

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 Daniel Dwight Dyer (Respondent Dyer)** submitted an application to the Department of Financial Institutions of the State of Washington (Department) for a loan originator license under Oxbow Mortgage Company PC LLC, a mortgage broker licensed under the Act. The on-line application was received by the Department on or about December 19, 2006.
- 1.2 Prior Administrative Action.** On May 24, 2004, an order was entered by the Washington Department of Financial Institutions, Division of Securities, revoking Respondent Dyer's securities salesperson license, effective December 31, 2003, for violations of the Securities Act of Washington, RCW 21.20 et seq.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

II. GROUNDS FOR ENTRY OF ORDER

2.1 Requirement of No Prior License Suspension or Revocation. Based on the Factual Allegations set forth in Section I above, Respondent Dyer fails to meet the requirements of RCW 19.146.310(1)(c) and WAC 208-660-350(2)(b) by having a license issued under this chapter or any similar state statute suspended or revoked within five 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 Daniel Dwight Dyer's application for a loan originator license be denied.

//
//
//
//
//
//
//
//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

Dated this 5th day of December, 2007.



DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:



STEVEN C. SHERMAN
Financial Legal Examiner

Approved by:



FATIMA BATIE
Financial Legal Examiner Supervisor

