

**ORDER SUMMARY – Case Number: C-08-009**

**Name(s):** Charles Brent McElwee;  
Cynthia Rose McElwee;  
CBSK Financial Group, Inc.

**Order Number:** C-08-009-09-FO01

**Effective Date:** 12-16-2009

**License Number:** DFI #17058  
**Or NMLS Identifier [U/L]**

**License Effect:** none

**Not Apply Until:** n/a

**Not Eligible Until:** n/a

**Prohibition/Ban Until:** 12-16-2014 (Completed)

<b>Investigation Costs</b>	\$		Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Fine</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Assessment(s)</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Restitution</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Financial Literacy and Education</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Cost of Prosecution</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
No. of Victims:				

Comments: Respondents have paid \$5,000 resolving all financial obligations owed to the Department.

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NO. C-08-009-09-FO01

## FINAL ORDER

### Respondents.

## I. DIRECTOR'S CONSIDERATION

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1 delivery. On November 19, 2008, the documents sent via Federal Express overnight delivery were  
2 delivered and signed for by C. McElwee. The documents sent via First-Class mail were not returned  
3 to the Department by the United States Post Office as undeliverable.

4 On November 20, 2008, the Department received signed Applications for Adjudicative hearing  
5 from Respondent CBSK Financial Group, Inc., and Respondent Charles "Brent" McElwee. To date,  
6 the Department has not received a signed Application for Adjudicative hearing from Respondent  
7 Cynthia Rose McElwee.

8 On February 13, 2009, the Department made a request to the Office of Administrative  
9 Hearings (OAH) to assign an Administrative Law Judge (ALJ) to schedule and conduct a hearing on  
10 the Statement of Charges. On February 27, 2009, OAH issued a Notice of Prehearing Conference  
11 scheduling a prehearing conference on Wednesday, March 18, 2009, at 8:15 a.m. That Order  
12 contained the following instruction to the parties: "The prehearing conference will be conducted by  
13 telephone conference call. Please call ten (10) minutes prior to the above-scheduled time locally at  
14 360- 690-7189 or toll free 1-800-243-3451." That Order also noted "Parties who fail to attend or  
15 participate in the hearing or other stage of an adjudicative proceeding may be held in default in  
16 accordance with chapter 34.05 RCW, RCW 34.05.440."

17 On March 18, 2009, the prehearing conference was convened by ALJ Gina L. Hale at 8:15 a.m.  
18 Respondents failed to appear and the Department moved for an order of default based on Respondents'  
19 failure to appear. On March 18, 2009, ALJ Hale issued an Order of Default dismissing the  
20 Respondents' appeal, and sent the Order of Default to the address in Respondents' Applications for  
21 Adjudicative Hearing.

22 Pursuant to RCW 34.05.440(3), Respondents had seven days from the date of service of the  
23 Order of Default to file a written motion with OAH requesting that the Order of Default be vacated  
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1 and stating the grounds relied upon. Respondents did not make a request to vacate during the statutory  
2 period. Pursuant to RCW 34.05.464 and WAC 10-08-211, Respondents had 20 days from the date of  
3 service of the Order of Default to file a Petition for Review of the Order of Default with the Director.  
4 Respondents did not file a Petition for Review during the statutory period.

5 B. Record Presented. The record presented to the Director for review and for entry of a  
6 final decision included the following:

- 7 1. Statement of Charges, cover letter dated November 18, 2008, Notice of Opportunity  
8 to Defend and Opportunity for Hearing, and blank Applications for Adjudicative  
9 Hearing for CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia  
10 Rose McElwee, with documentation of service;
- 11 2. Applications for Adjudicative Hearing for CBSK Financial Group, Inc., and Charles  
12 "Brent" McElwee;
- 13 3. Request to OAH for Assignment of Administrative Law Judge;
- 14 4. Notice of Prehearing Conference dated February 27, 2009, with documentation of  
15 service;
- 16 5. Order of Default dated March 18, 2009, with documentation of service;
- 17 6. Respondents' request to reschedule pre-hearing conference, dated March 30, 2009;
- 18 7. Initial Order on Petition to Reinstate dated October 22, 2009, with documentation of  
19 service.

20 C. Factual Findings and Grounds For Order. Pursuant to RCW 34.05.440(1) and RCW  
21 34.05.440(2), the Director hereby adopts the Statement of Charges, which is attached hereto.

## 22 II. FINAL ORDER

23 Based upon the foregoing, and the Director having considered the record and being  
24 otherwise fully advised, NOW, THEREFORE:  
25

1           A.     IT IS HEREBY ORDERED, that:

- 2                   1. Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia  
3                   Rose McElwee are prohibited from participating in the conduct of the affairs of any  
4                   consumer loan company licensed or required to be licensed by the Department, in any  
5                   manner, for a period of five years; and
- 6                   2. Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia  
7                   Rose McElwee shall jointly and severally pay restitution to injured borrower B.A in  
8                   the amount of \$5,433 for disclosure violations in loan number [REDACTED] (application  
9                   number [REDACTED])<sup>1</sup>; and
- 10                  3. Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia  
11                  Rose McElwee shall jointly and severally pay a fine of \$10,000; and
- 12                  4. Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia  
13                  Rose McElwee shall jointly and severally pay the unpaid 2005 and 2007 annual  
14                  assessment fees of \$3,000, and annual assessment late penalties which continue to  
15                  accrue at the rate of \$100 per day; and
- 16                  5. Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia  
17                  Rose McElwee shall jointly and severally pay an investigation fee of \$2,553.37,  
18                  calculated at \$69.01 per hour for thirty-seven staff hours devoted to the investigation;  
19                  and
- 20                  6. Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia  
21                  Rose McElwee shall maintain records in compliance with the Act and provide the  
22                  Director with the location of the books, records and other information relating to  
23                  Respondent s' consumer loan company business, and the name, address, and  
24                  telephone number of the individual responsible for maintenance of such records in  
25                  compliance with the Act.

          B.     Reconsideration.       Pursuant to RCW 34.05.470, Respondents have the right to file a  
Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition  
must be filed in the Office of the Director of the Department of Financial Institutions by courier at 150  
Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia,  
Washington 98504-1200, within ten days of service of the Final Order upon Respondents. The Petition

<sup>1</sup> The loan number is from the Final HUD-1. The application number is from Respondents' loan documents.

1 or Reconsideration shall not stay the effectiveness of this order nor is a Petition for Reconsideration a  
2 prerequisite for seeking judicial review in this matter.

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

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

9 D. Judicial Review. Respondents have the right to petition the superior court for  
10 judicial review of this agency action under the provisions of chapter 34.05 RCW. For the requirements  
11 for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.  
12

13 E. Non-compliance with Order. If you do not comply with the terms of this order within  
14 thirty days of receipt, the Department may seek its enforcement by the Office of Attorney General to  
15 include the collection of the fines, fees, and restitution imposed herein.

16 F. Service. For purposes of filing a Petition for Reconsideration or a Petition for  
17 Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service  
18 attached hereto.

19  
20 DATED this 15<sup>th</sup> day of December 2009.



21 STATE OF WASHINGTON  
22 DEPARTMENT OF FINANCIAL INSTITUTIONS

23 [Redacted Signature]  
24 SCOTT JARVIS  
25 DIRECTOR

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

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

NO. C-08-009-08-SC01

CBSK FINANCIAL GROUP, INC.,  
dba AMERICAN HOME LOANS,  
CHARLES "BRENT" MCELWEE,  
President and 50% Owner, and  
CYNTHIA ROSE MCELWEE,  
Secretary and 50% Owner,

STATEMENT OF CHARGES AND  
NOTICE OF INTENTION TO ENTER  
AN ORDER TO PROHIBIT FROM  
INDUSTRY, ORDER RESTITUTION,  
IMPOSE FINE, COLLECT UNPAID  
ANNUAL ASSESSMENT FEES, AND  
COLLECT INVESTIGATION FEE

Respondents.

**INTRODUCTION**

Pursuant to RCW 31.04.093 and RCW 31.04.165, 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). 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, by and through his designee Division of Consumer Services Director Deborah Bortner institutes this proceeding and finds as follows:

**I. FACTUAL ALLEGATIONS**

**1.1 Respondents.**

**A. CBSK Financial Group, Inc., dba American Services (Respondent CBSK)** was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a Consumer Loan Company on or about July 1, 1997. Respondent CBSK surrendered its license on December 18, 2007, and noted an effective date of October 24, 2007.

1           **B. Charles "Brent" McElwee (Respondent B. McElwee)** is known to be the President and  
2 50% owner of Respondent CBSK.

3           **C. Cynthia Rose McElwee (Respondent C. McElwee)** is known to be Secretary and 50%  
4 owner of Respondent CBSK.

5 **1.2 Prohibited Practices.** In early December 2004, borrower B.A. applied with Respondents for a  
6 residential mortgage loan. Respondents pulled the borrower's credit report on December 7, 2004, but  
7 Respondents did not provide the borrower with mandatory disclosures until December 19, 2004. At  
8 that time, Respondents sent disclosures accompanied by a cover letter instructing the borrower to  
9 "sign in the highlighted areas" and "date all documents 12-8-04."

10 **1.3 Failure to Submit 2005 Consolidated Annual Report and Worksheet and Pay Annual**  
11 **Assessment Fee.** Respondents were required to submit their 2005 Consolidated Annual Report and  
12 worksheet and pay any resulting annual assessment fee to the Department by March 1, 2006. To date,  
13 Respondents have not submitted the report or worksheet or paid an annual assessment for 2005.

14 **1.4 Failure to Submit Completed 2007 Consolidated Annual Report and Worksheet and Pay**  
15 **Annual Assessment Fee.** On December 18, 2007, the Department received a notice from  
16 Respondents surrendering Respondents' consumer loan license effective October 24, 2007. Based  
17 upon the closure, Respondents were required to submit their 2007 Consolidated Annual Report and  
18 worksheet and pay any resulting annual assessment fee to the Department by November 23, 2007.  
19 The notice of closure received December 18, 2007, was accompanied by a Consolidated Annual  
20 Report signed and dated by Respondent B. McElwee, but the loan analysis section was not completed.  
21 Additionally, no worksheet for the annual assessment was submitted and no annual assessment was  
22 paid. Respondents have not submitted a completed report or worksheet or paid an annual assessment  
23 for 2007.



1 **1.5 On-Going Investigation.** The Department's investigation into the alleged violations of the  
2 Act by Respondents continues to date.

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

4 **2.1 Requirement to Provide Timely Disclosures.** Based on the Factual Allegations set forth in  
5 Section I above, Respondents are in apparent violation of former RCW 31.04.027(2), (6), and (10)  
6 (1991) and former RCW 31.04.102(2) and (3) (1991) for failing to make mandatory disclosures within  
7 three business days of receiving a borrower's application and for asking a borrower to back-date  
8 disclosures.

9 **2.2 Requirement to Submit 2005 Consolidated Annual Reports and Worksheets and Pay**  
10 **Annual Assessment Fees.** Based on the Factual Allegations set forth in Section I above,  
11 Respondents are in apparent violation of former RCW 31.04.085 (1991), former RCW 31.04.155  
12 (1991), former WAC 208-620-190 (1992) and former WAC 208-620-220 (1996) for failing to submit  
13 their 2005 Consolidated Annual Reports and worksheets and pay the associated annual assessment  
14 fees.

15 **2.3 Requirement to Submit Complete 2007 Consolidated Annual Reports and Worksheets**  
16 **and Pay Annual Assessment Fees.** Based on the Factual Allegations set forth in Section I above,  
17 Respondents are in apparent violation of RCW 31.04.085, RCW 31.04.155, WAC 208-620-430, WAC  
18 208-620-440, and WAC 208-620-460 for failing to properly submit their completed 2007  
19 Consolidated Annual Report and worksheet and pay the associated annual assessment fee.

## 20 **III. AUTHORITY TO IMPOSE SANCTIONS**

21 **3.1 Liability for Conduct of Employees.** Pursuant to former WAC 208-620-170 (1992), each  
22 licensee is responsible for assuring that any person making loans on behalf of the licensee has sufficient  
23 understanding of the statutes and regulations so as to insure compliance with the Act.

1 **3.2 Authority to Prohibit from the Industry.** Pursuant to former RCW 31.04.093(6)(e) (2001),  
2 the Director may issue an order removing from office or prohibiting from participation in the affairs of  
3 any licensee, or both, any officer, principal, employee, or loan originator, or any person subject to the  
4 Act, for any violation of RCW 31.04.027.

5 **3.3 Authority to Impose Fine.** Pursuant to former RCW 31.04.093(4) (2001), the Director may  
6 impose fines of up to one hundred dollars per day upon the licensee for any violation of the Act.

7 **3.4 Authority to Order Restitution.** Pursuant to former RCW 31.04.093(5) (2001), the Director  
8 may issue an order directing a licensee, its employee or loan originator, or other person subject to the  
9 Act to make restitution to a borrower who is damaged as a result of a violation of the Act.

10 **3.5 Authority to Collect Annual Assessment Fees.** Pursuant to RCW 31.04.085, WAC 208-620-  
11 430, WAC 208-620-440, and WAC 208-620-460, the Director may collect an annual assessment fee from  
12 all licensees and an annual assessment late fee of \$100 per day for late annual assessments.

13 **3.6 Authority to Charge Investigation Fees.** Pursuant to RCW 31.04.145(3) and WAC 208-620-  
14 590, every licensee investigated by the Director or the Director's designee shall pay for the cost of the  
15 investigation, calculated at the rate of \$69.01 per staff hour for time incurred, plus expenses.

#### 16 **IV. NOTICE OF INTENTION TO ENTER ORDER**

17 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as  
18 set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose  
19 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, and RCW  
20 31.04.205. Therefore, it is the Director's intention to ORDER that:

21 **4.1** Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose  
22 McElwee be prohibited from participating in the conduct of the affairs of any consumer loan company  
23 licensed or required to be licensed by the Department, in any manner, for a period of five years; and

1 4.2 Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose  
2 McElwee jointly and severally pay restitution to injured borrower B.A in the amount of \$5,433 for  
disclosure violations in loan number [REDACTED] (application number [REDACTED])<sup>1</sup>; and

3 4.3 Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose  
4 McElwee jointly and severally pay a fine which as of the date of these charges totals \$10,000; and

5 4.4 Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose  
6 McElwee jointly and severally pay the unpaid 2005 and 2007 annual assessment fees of \$3,000, and  
annual assessment late penalties which continue to accrue at the rate of \$100 per day; and

7 4.5 Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose  
8 McElwee jointly and severally pay an investigation fee which as of the date of these charges totals  
\$2,553.37 calculated at \$69.01 per hour for thirty-seven staff hours devoted to the investigation to date;  
and

9 4.6 Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose  
10 McElwee maintain records in compliance with the Act and provide the Director with the location of the  
books, records and other information relating to Respondent s' consumer loan company business, and the  
name, address, and telephone number of the individual responsible for maintenance of such records in  
11 compliance with the Act.

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23 <sup>1</sup> The loan number is from the Final HUD-1. The application number is from Respondents' loan documents.

1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry,  
3 Order Restitution, Impose Fines, Collect Unpaid Annual Assessment Fees, and Collect Investigation  
4 Fee is entered pursuant to the provisions of RCW 31.04.093, RCW 31.04.165, RCW 31.04.202, and  
5 RCW 31.04.205, and is subject to the provisions of chapter 34.05 RCW (The Administrative  
6 Procedure Act). Respondents may make a written request for a hearing as set forth in the NOTICE OF  
7 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this  
8 Statement of Charges.

9  
10 Dated this 17th day of November, 2008.

11 [Redacted]  
12  
13 **DEBORAH BORTNER**  
14 Director  
15 Division of Consumer Services  
16 Department of Financial Institutions

15 Presented by:

16 [Redacted]  
17  
18 **STEVEN C. SHERMAN**  
19 Financial Legal Examiner

19 Approved by:

20 [Redacted]  
21  
22 **JAMES R. BRUSSELBACK**  
23 Enforcement Chief

