

Terms Completed

ORDER SUMMARY – Case Number: C-08-114

Name(s): WIN Financial Corp
Ray L. Schiavone

Order Number: C-08-114-09-CO01

Effective Date: May 13, 2009

License Number: DFI: 44012 [NMLS: 14112] WIN
Or NMLS Identifier [U/L] DFI: 44014 [NMLS: 20792] –Ray Schiavone
(Revoked, suspended, stayed, application denied or withdrawn)
 If applicable, you must specifically note the ending dates of terms.

License Effect: 2-year License Suspension (stayed)

Not Apply Until: n/a

Not Eligible Until: _____

Prohibition/Ban Until: n/a

Investigation Costs	\$1,521.60	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date
Fine Total of \$10,000	\$5,000 (\$5,000 stayed)	Due	Paid <input checked="" 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: _____

1 judicial review of the issues raised in this matter, or of the resolution reached herein. Accordingly, Respondents
2 agree to withdraw their appeal and to inform the Office of Administrative Hearings in writing of their withdrawal.

3 **C. Admission of Liability.** Respondents WIN and Schiavone have cooperated with the Department's
4 investigation into this matter and acknowledge the Department's jurisdiction and authority to enter this Consent
5 Order. Respondents WIN and Schiavone admit that during the relevant time period, Respondents:

6 Engaged in an unfair and deceptive act or practice in violation of the Act by advertising in
7 violation of WAC 208-660-440(9), which prohibits advertising that suggests or represents
that a mortgage broker is affiliated with any entity they do not actually represent.

8 With that exception, Respondents WIN and Schiavone neither admits nor denies the Factual Allegations of the
9 Statement of Charges. The parties intend this Consent Order to fully resolve the Statement of Charges.

10 **D. License Suspensions (Stayed).** It is AGREED AND ORDERED that Respondent WIN is subject to a
11 two-year suspension of its mortgage broker license, and that Respondent Schiavone is subject to a two-year
12 suspension of his loan originator license. HOWEVER, it is further AGREED AND ORDERED that the license
13 suspensions shall be stayed for a period of two-years from the date of entry of this Consent Order, subject to
14 paragraphs F and G of this Consent Order.

15 **E. Fine (Partially Stayed).** It is AGREED AND ORDERED that Respondents WIN and Schiavone are
16 jointly and severally subject to a fine by the Department in the amount of \$10,000. HOWEVER, it is further
17 AGREED AND ORDERED that Respondents WIN and Schiavone shall pay to the Department \$5,000 of the total
18 fine, in the form of a cashier's check made payable to the "Washington State Treasurer" upon entry of this
19 Consent Order, and that the balance of the fine (\$5,000) shall be stayed for a period of two-years from the date of
20 entry of this Consent Order, subject to paragraphs F and G of this Consent Order.

21 **F. Lifting of Stay.** It is AGREED AND ORDERED that:

- 22 1. If, during the stay, Respondent WIN and/or Schiavone violate RCW 19.146.0201(2) or (11), or
23 violate any of the terms and conditions of this Consent Order, and the Department seeks to lift the
24 stay, the Department will first notify Respondent WIN and/or Schiavone in writing. The notice
25 will set forth a description of the alleged violations; the stay(s) the Department is seeking to lift;
the opportunity to request an expedited adjudicative hearing, including the time and manner in
which Respondent WIN and/or Schiavone may request such a hearing; and a copy of this Consent
Order.

- 1
- 2 2. If Respondent WIN and/or Schiavone do not request an expedited adjudicative hearing in the time
- 3 and manner directed, the Department will immediately suspend Respondent WIN's mortgage
- 4 broker license, and/or immediately suspend Respondent Schiavone's loan originator license, and
- 5 impose and collect the \$5,000 balance of the fine.
- 6 3. If requested, the adjudicative hearing will commence within 15 business days (or as soon as the
- 7 schedule of the Office of Administrative Hearings permits) from the receipt of Respondent WIN's
- 8 and/or Schiavone's timely request for adjudicative hearing. The parties will accommodate the
- 9 prompt scheduling of the hearing, the scope of which will be limited to whether or not
- 10 Respondent WIN and/or Schiavone has violated RCW 19.146.0201(2) or (11), or any of the terms
- 11 and conditions of this Consent Order.
- 12 4. At the conclusion of the adjudicative hearing, the Administrative Law Judge will issue an initial
- 13 decision. Either party may timely file a petition for review with the Director of the Department.

14 **G. Expiration of Stay:** It is AGREED AND ORDERED that if, upon expiration of the stay, no notification

15 to lift any stay for alleged violations of this Consent Order has been received by Respondent WIN and/or

16 Schiavone, the Department will consider the stay completed. In that event, in connection with this Consent Order,

17 the Department will not seek to suspend Respondent WIN's mortgage broker license, and/or suspend Respondent

18 Schiavone's loan originator license, and will not seek to impose and collect the remaining \$5,000 fine from

19 Respondents.

20 **H. Investigation Fee.** It is AGREED AND ORDERED that Respondents WIN and Schiavone shall pay to

21 the Department an investigation fee of \$1,521.60, in the form of a cashier's check made payable to the

22 "Washington State Treasurer," upon entry of this Consent Order.

23 **L Non-Compliance with Order.** It is AGREED AND ORDERED that Respondents understand that

24 failure to abide by the terms and conditions of this Consent Order may result in further legal action by the

25 Director. In the event of such legal action, Respondents may be responsible to reimburse the Director for the

cost incurred in pursuing such action, including but not limited to, attorney fees.

J. Authority to Execute Order. It is AGREED that the undersigned Respondents have represented and

warranted that they have the full power and right to execute this Consent Order on behalf of the parties.

K. Voluntarily Entered. It is AGREED that the undersigned Respondents have voluntarily entered into this

Consent Order, which is effective when signed by the Director's designee.

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1 L. Completely Read, Understood, and Agreed. It is AGREED that Respondents have read this Consent
2 Order in its entirety and fully understand and agree to all of the same.

3 WIN FINANCIAL CORP.

RAY L. SCHIAVONE

By:

4 [Signature]
5 Ray L. Schiavone

5/1/09
Date

[Signature]
Ray L. Schiavone

5/1/09
Date

6 President of WIN Financial Corp.

Individually

7 Approved for entry by:
8 Benjamin Law Offices PLLC

[Signature]

5/1/09
Date

9 Steven Benjamin, Esq. SBC No. 176784
10 Attorneys for Respondents

11 DO NOT WRITE BELOW THIS LINE

12 ENTERED THIS 13th DAY OF May, 2009.

[Signature]

15 DEBORAH BORTNER
16 Director, Division of Consumer Services
Department of Financial Institutions

17 Presented by:

18 [Signature]

19 ANTHONY W. CARTER
20 Enforcement Attorney



21 Approved by:

22 [Signature]

23 JAMES R. BRUSSELBACK
24 Enforcement Chief

1 **B. Prohibited Acts.**

2 **1.3** Beginning in late 2007, and continuing through at least March 2008, Respondents Win and Schiavone
3 distributed three similar direct mail solicitations in Washington State. The solicitations warned recipients of pending
4 interest rate and monthly payment increases on their adjustable rate residential mortgage loans, and advised recipients
5 to call Respondent Win within 14 days to avoid the increase. The Department received four consumer complaints
6 about the solicitations, all alleging that the solicitations were misleading:

7 a. Complaint #25670 was filed by a resident of Thurston County in January 2008. The complainant
8 alleged that Respondents' solicitation was misleading, as he had a fixed mortgage not subject to a rate
9 or payment increase. The complainant included a copy of the envelope and solicitation. The envelope,
10 labeled in large, bold, all capitals font, exclaims "**PERSONAL & CONFIDENTIAL**," and declares
11 that the mailer is a "**SECURED DOCUMENT**." The envelope includes a warning of a "\$2,000 FINE,
12 5 YEARS IMPRISONMENT, OR BOTH FOR ANY PERSON INTERFERING OR OBSTRUCTING WITH DELIVERY OF
13 THIS LETTER," citing 18 U.S.C. §1720.

14 The solicitation, headlined "PENDING RATE ADJUSTMENT NOTIFICATION," references the recipient's
15 original mortgage lender by name, and claims that if the recipient does not make changes to his
16 "account status," his mortgage payment will increase. The solicitation claims that due to the recipient's
17 payment record, the recipient "may now qualify to make no payments until March 2008."

18 b. Complaint #25941 was filed by a resident of King County in February 2008. The complaint was filed
19 on behalf of the addressee by his widow. The complainant alleged that the solicitation was using
20 "misleading scare tactics," as she had not had a mortgage on the subject property since 2004. She
21 further alleged that the solicitation, similar to that described above, was simply misleading.

22 c. Complaint #26498 was filed by a resident of King County in April 2008. The complainant alleged that
23 the solicitation was misleading, as her adjustable rate mortgage was not subject to reset until 2011. She
24 further alleged that the solicitation was "false, misleading, intimidating and likely predatory." The
25 envelope and solicitation she received were nearly identical to that referenced in complaint #25670.
The primary change was that this solicitation claimed that due to the recipient's payment record, she
"may now qualify to skip next month's payment."

d. Complaint #26530 was filed by a resident of King County in April 2008. The complainant alleged that
the solicitation was misleading, as he had no mortgage loan with the claimed "original lender." He
claimed that the solicitation "seems intended to confuse the recipient into believing that a rate
increase/payment adjustment will occur unless they take action by contacting Win Financial." He
further alleged that the solicitation, similar to those described above, "is very misleading."

1.4 According to Respondent Schiavone, Respondents mailed approximately 14,500 similar solicitations into
Washington State, received approximately 390 calls, and took approximately 95 residential mortgage loan
applications in response to the solicitation.

1 **1.5** Respondents' envelopes were designed to resemble government mailings, and included warnings or notices not
2 required by the U.S. Postmaster. Respondents' solicitations did not adequately disclose that a primary purpose of the
3 mailer was to solicit consumers for residential mortgage loans; misrepresented that recipients of the solicitations were
4 about to have mortgage payment increases; and misrepresented that recipients were required to take some action to
5 avoid the increase. Furthermore, the solicitations failed to disclose the source from whom Respondents obtained
6 information about the recipients' current loan.

7 **C. On-Going Investigation.**

8 **1.6** The Department's investigation into the alleged violations of the Act by Respondents continues to date.
9

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

11 **2.1 Unfair or Deceptive Practices.** Based on the Factual Allegations set forth in Section I above, Respondents are
12 in apparent violation of RCW 19.146.0201(2), for engaging in unfair or deceptive practices toward any person by the
13 use of false, deceptive, or misleading advertising.

14 **2.2 Violation of Federal Trade Commission Act.** Based on the Factual Allegations set forth in Section I above,
15 Respondents are in apparent violation of RCW 19.146.0201(11) for failing to comply with the Federal Trade
16 Commission Act, 15 U.S.C. §§41-58, *as amended*, by engaging in unfair or deceptive acts or practices.

17 **2.3 Misleading Advertising.** Based on the Factual Allegations set forth in Section I above, Respondents are in
18 apparent violation of WAC 208-660-430(23), which requires disclosure of the source of information from which they
19 obtained information about the recipients' existing loan, and WAC 208-660-440(2), which prohibits advertising with
20 envelopes containing warnings or notices citing government codes or form numbers not required by the U.S.
21 Postmaster to be shown on the mailing.
22

23 **III. AUTHORITY TO IMPOSE SANCTIONS**

24 **3.1 Authority to Revoke License.** Pursuant to RCW 19.146.220(2)(e), the Director may revoke a license for any
25 violation of the Act.

1 **3.2 Authority to Impose Fines.** Pursuant to RCW 19.146.220(2)(e), the Director may impose fines on a licensee for
2 any violation of the Act.

3 **3.3 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-520, and
4 WAC 208-660-550(4)(a), the Department is entitled to collect the costs of any investigation of alleged violations of the
5 Act. The investigation fee will be calculated at the rate of forty-eight dollars per hour that each staff person devoted to the
6 investigation.

7
8 **IV. NOTICE OF INTENT TO ENTER ORDER**

9 Respondents' violations of the Act, as set forth in the above Factual Allegations, Grounds for Entry of Order, and
10 Authority to Impose Sanctions, constitute a basis for the entry of an Order under RCW 19.146.220, RCW 19.146.221, and
11 RCW 19.146.223. Therefore, it is the Director's intent to ORDER that:

12 **4.1** Mortgage Broker license number 510-MB-44012, issued by the Department to Respondent Win Financial Corp., be
13 revoked;

14 **4.2** Loan Originator license number 510-LO-44014, issued by the Department to Respondent Ray L. Schiavone, be
15 revoked;

16 **4.3** Respondents Win Financial Corp. and Ray L. Schiavone jointly and severally pay a fine. As of the date of this
17 Statement of Charges, the fine totals \$500,000; and

18 **4.4** Respondents Win Financial Corp. and Ray L. Schiavone jointly and severally pay an investigation fee. As of the
19 date of this Statement of Charges, the fee totals \$650.

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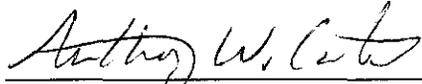
1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intent to Enter an Order to Revoke Licenses, Prohibit From Industry,
3 Impose Fines, and Collect Investigative Fees (Statement of Charges) is entered pursuant to the provisions of
4 RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of
5 chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request for a hearing as
6 set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying
7 this Statement of Charges.

8
9 Dated this 16th day of December, 2008.

10 
11 DEBORAH BORTNER
12 Director, Division of Consumer Services
Department of Financial Institutions

13 Presented by:

14 
15 ANTHONY W. CARTER
16 Enforcement Attorney



17 Approved by:

18 
19 JAMES R. BRUSSELBACK
20 Enforcement Chief

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

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

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

18 Dated this 16th day of December, 2008.



19 *Deborah Bortner*

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